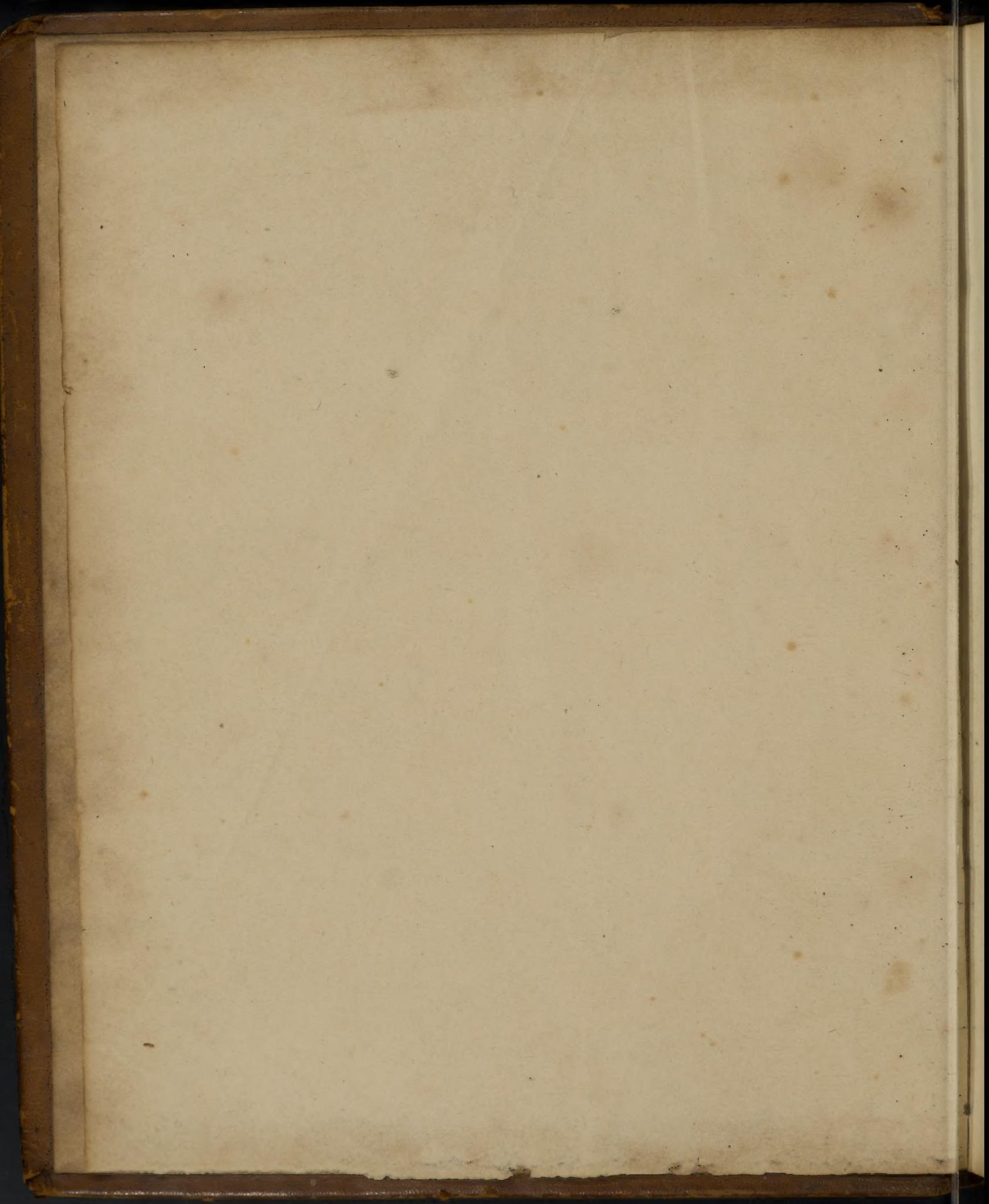


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Connecticut

Criminal Law
Penitentiary Law
and
Code of Connecticut

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Reeves Gould's
Lectures

Volume VII

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Common Law



Criminal Law



Public Wrongs.

by
James Gould Esq.

The principles of this branch of the Law are so defined that I shall give you little but what may be found in the Elementary Books on that subject. This is the most simple branch of Municipal Law.

That part of Municipal Law which comes under the head of Public Wrongs is called "Crimes" - "Crown Laws" - and "Torts of the Crown" which terms are synonymous. Public Wrongs include all offenses against this Law.

A Crime, or Misdemeanor is the commission of some act prohibited by Law or the omission of some act commanded by Law. Crimes & Misdemeanors are synonymous terms. They differ from private Wrongs in this that Crimes are ^{of} ^{the} ⁵ ^{kind} ^{of} ^{the} ^{same} ^{kind} ^{as} ^{the} ^{offense} ^{is} ^{done} ⁱⁿ ^{the} ^{public} ^{right} ^{whereas} ^{private} ^{Wrongs} ^{are} ^{done} ⁱⁿ ^{the} ^{private} ^{right} ^{of} ^{an} ^{individual} ^{considered} ^{at} ^{such} ^a ^{time}.

In almost every case a Public Wrong,

includes a Civil injury & a Publick Injury.
It does not however at every time thus a
coupled & distinct may be done in it-
self to no individual. But as a pub-
lic ^{& ~~public~~} generally includes a private injur-
y. The object of the Law to give a right to com-
edy one for the publick the other for the
Private injury or wrong. The party af-
fected by the Crime to prosecute the
injury for himself. Said the Case of
Baldwin the King is a monarchial Gov-
ernment or the People is a popular Gov-
ernment prosecuted for the publick wrong
and the Party created for the private injury.

There is a material difference be-
tween the act and the offence. The act
is the thing done it is the mere action.
The offence is merely the character
which the Law affixes to such acts. One
act may constitute many different
offences and so one offence may con-
sist of many acts.

If it should strike that two laws in
succession all those acts being committed
in Continuity constituted but one offence.

The Civil injury and the Publick Wrong
are distinct. If the Publick Wrong consists of

In Robbery the private injury included in it, & Bp. 5. 6.^d
is mitigated, and the Individual has no rem^d. Bul. 8. 13. 2.
ed. 1. Collo. 5. 5. p.

This doctrine of Allegory has been
successfully accounted for. It is said by
some to be founded on the policy of the 35. Bp. 1762
Law, in order to bring the offender to pun-
ishment - But I see no reason for that. -

The true foundation for this doctrine
seems to be that the Punishment which
the Law inflicts for the publick Wrong,
renders it impossible for the offender to sat-
isfy the injured party for the private injury 25. 1. 873.
of the Body, and the Plaintiff are the only Ed. 1. 15. 2.
means of obtaining Satisfaction, and as these
are both for the same Case of Robbery to sat-
isfy publick justice nothing remains to sat-
isfy the private injury. This seems to be
the true doctrine of Allegory.

If the Crime does not amount to Fel.
any the Individual has his remedy by a
Civil action where there is no forfeiture.

In Conn. the Doctrine of Allegory has
never been regarded, in any spirit. -
Civil actions have been commenced and
sustained here for Rob^r, Burglary,
and Detainee for R^r injury, and the reason

is that there is no forfeiture of Property.

S^t Court 182^d Forfeiture occurs in Criminal Cases.
D^r 183^d Cases only - for destroying a Title.
D^r 285^d Magistrate and Magistrate's Lawyer.

But in neither of these Cases is the
L^eg^y of the Offender taken.

There was a Case of this.
King came in Court. A brought a Civil
Action agst B, and Procured Judgment
agst him by Subornation of Testimony - after-
ward B brought an action agst A for the
Civil Injury but the Ct. determined that
the action could not be sustained because
it would impeach the former judgment.

Of the Nature of Punishments.

It seems to be agreed that the right of
punishing for Crimes is founded on the
Law of Nature, and this right is at least
as old as Nature belongs to man. Individual and
to society in general. This right is so
deeply rooted in the Law.

In a state of Society this right is not
more transferred to the Sovereign power.

The right of Society to Punishment
is founded on the Consent of all
members.

its members, and supposes a compact.

But this notion of compact will not authorise Punishment in every Case, as 2^d Badman in the Case of ^{positive} Offences & those created by ^{positive} Law, and not against the Law of nature. Here the punishment is not derived from the Consent of the members.

This shows us of what little practical use - But it is conceived the true and rational right of inflicting Punishment Paley 349 in any Case, is founded on necessity and 1st Hale 13 good expediency. Men will form for 4th B. one Society and Cant exist without it and Society Cant exist without a right to inflict Offences - hence the original and validity of Punishments.

The end or final Cause of human Punishment is the prosecution of Crimes and this is effected in three ways - 4th 1st By such Punishment as will tend to deter the Offender -

2^d By deterring others to the same by his Punishment, from acting in a similar manner -

3^d By deterring the Offender of the gravity of Committing further injury or Crime -

What Persons are Capable of Committing
Crimes. -

The General rule is that all persons
are liable for disobedience of the
Laws of the Land, except those who are
expressly excepted.

With the classes which do not the
Committee of a Crime from Punishment
may be reduced to this one Consideration.
By the want of Will.

Every person has probably power to do
an act that will constitute a Crime & will
not concern with the acts.

The rule is different in Civil injuries,
for the intention here need not offend it
is much Considered. -

Now there is a defect of Will in three
different ways. - - - - -

The Defect of Understanding. - - - - -

Infants under the age of discretion
know not what they do and are not punishable for any crime whatever
the Criminal Law punishes & Civil Law
gives Damages.

It is a Principle of Law
that if the Crime consists in an injury, an

7

Infant tho. of years of discretion is not
punishable. This rule founders on the
ground that an Infant has not the con-
sciousness of his person or property.

Hale 20
4 Blom 22
vol 1. 200

The age of legal discretion is 14 under
that age he wants discretion. But at 14 and
over that age he is liable the same as
an adult i.e. e, want of discretion
cannot exceed a year. —

The period between 14 and 7 is sub-
ject to great uncertainty, but the general
law is in favour of the Infants. But in
Capital Cases this presumption may be Hale 20
rebutted. Whether it may be rebutted Hale 25
under 7 is not clearly settled in the Books. 6 Blom 22
But from what Justice Blackstone says, it 4 Blom 23,
seems it cannot be rebutted.

The Infant under 14 can't be punished
for Crimes and Misdemeanors, not Capital,
under 7 he is not the subject of punishment. 4 Blom 24

Idiots or Lunatics are ^{not} punishable Hale 20
while under this incapacity. But if a
Lunatic commits a crime in a fixed
interval he is punishable.

It was formerly supposed that Deaf
and Dumb Persons were not punishable.
See

Section 106) for Crimes. But it is now settled that those
 Ch. 394. Persons may be tried and punished if it
 Ch. 462. can be made to appear that they were
 Ch. 324. capable of proceeding decently against -

In the grand that want of understanding will excuse a man from punishment - it is clear that if a man becomes insane after he has committed a Crime he can't be arraigned and tried before he is adjudged to stand trial, and if he becomes so after he has been tried and before judgment it cannot be pronounced, and if after sentence pronounced and before execution he can't be executed - Whether he is insane or not must be tried by a jury.

And upon the same Principles he
 Ch. 617. who incites a mad man to an unbad -
 Ch. 35. fact set himself the offender - He is
 Ch. 53. not an accessory but he is principial,
 Ch. 6. for the madman having no will is in
 the case a mere instrument.

But a want of Will arises from
 Ch. 19. a voluntary intoxication, without ex-
 Ch. 44. cure and abatement. But Tom of Finney
 Ch. 12. says "All Good" that a drunkard can
 Ch. 2. not be held responsible.

on an habitual debility of mind, brought on by a long course of Intoxication would excuse him. - Now I consider this debility as a consequence of disease, and this disease terminates in a want of understanding.

But when this Intoxication is not voluntary, but is occasioned by force or fraud, the want of understanding is an excuse.

2^o. But there are cases in which the Will is neutral, and it is a gen^o rule that if one commits a Crime from chance, or accident its will excuse him. Cases of this kind occur in Hornwick. - ^{17 March 5} ^{4 Coke 124}

But if a man commits an unlaw^o ful act voluntarily he is liable for an ^{17 Hale} ^{Heling 128,} intentional injury.

Its ignorance or mistake in point of fact excuses on the ground of a defect of Will. Thus if a Captain of a Ship shooting at was below he is not liable ^{criminal} but civil^o only.

But ignorance in point of Law will not excuse a man because it is the duty of every man to know the Law. Now the reason that ignorance is

P. 343 in Parch of fact occurs and ignoramus
 P. 347 in Parch of fact does not. is this. that
 P. 35155. in a mistake in Parch of fact the Will
 P. 42 in a mistake in Parch of fact the Will
 P. 110 does not Concur in the Test. but in
 P. 105. does not Concur in the Test. but in
 P. 106. Parch of fact it does.

3rd. There may be a defect in Will
 P. 347 arising from Confusion or neglect
 here the Will does not Concur.

A married Woman is excused in many
 instances by the decision of her husband
 P. 42 and the Rule goes so far that if the Cow
 1000th P. 63 with the Oxen is the property of her
 4. D. C. 28. Husband she is excused and he is liable
 P. 230. 244

If she commits Theft or Burglary by
 1000th P. 63 the decision of her Husband theft etc.
 1000th P. 63 cut. But if she commits it voluntarily
 or by his Command alone without his
 1000th P. 63 being present she is not excused. —

Christian 1000th P. 63
 1000th P. 63 To the Case of Manslaughter &
 1000th P. 63 A Woman is not excused on the ground of
 married Condition.

1000th P. 63 But a Slave is never excused by the
 1000th P. 63主人 of his Master or a Servant by
 1000th P. 63 the Command of his Master.

In some Cases there is a kind of Com-
 1000th P. 63 pany working as defects of Will that
 1000th P. 63 will.

that will excuse the Offender - as when 4th Com³⁰.
one commits an offence under & wth 1st Hale 50,
"per missam" - But this will not excuse
all offenders. - This last rule from 4th Com³⁰
tried only as no ^{1st} passed Offences and not 1st Hale 51
as no ^{2nd} natural ones.

Another Species of necessity arising
from legal Compulsion it where the
Offense is ^{1st} passive. So if an Officer is by 1st Hale 53
distrusted from doing his duty he may use 4th Com³¹,
all violence necessary for the Person for purpose
of it. - There he will in instance of a
duty which the Law imposes on him.
- The Law does the act by him.

That has made a question whether
a man can excuse himself for
Stealing in Case of extreme necessity or 4th Com³¹
want of that it is now settled that by 1st Hale 54
on the Principles of the Common Law which
provides in all Cases for the Poor.

It two or more persons may be
concerned in the Commission of a Crime
the Law has established a difference
between Principals and Accessories. -

One may be Principal in two
degrees like in the first degree is
he who is the instigator or actual Per.

~~Offense 34~~ Precipitated of the Offense.
Woodes 97 One in the Second degree is one who
1 Hale 643 is present and aiding and abetting the
(Dane 197) in the actual perpetration.
Wright 441 actual Perpetration.

D 268326 The Books do not all agree in this distinc-
tion. But I beliove, I have given the
correct one.

Wyll. Dally 523 This distinction is not recd.
1 Hale 437. Same that it formerly was, as see,

I have enquired that a present in
the Second degree is one who is present to
Woodes 350, but this need not be an actual presence on
Dane 197 without hearing or sight a Constitutive,
Wyll. Dally 529 presence is Publick. - So if one stands as
a Guard, or if by this is Construction pres-
ence for he is present.

For the Principals of Subjiction, a person
Geach 29, for a Master or Abettor in the offense it
Woodes 534 is not necessary that the actual Perpetration
should be known. Tho', the usual form of
an Judgement would seem to make it so.

This distinction hats and Cases of Colony
created by State as will as State created by
Woodes 525 Com. Law. - a State Governor is subject to all
the institutions which belongs to a Com. Law.
Governor.

It is not universally agreed what a
structured offence should be proved to make
a principal in the second degree. It can
only apply when a principal of the first
degree must be present when the wrong is
committed. As in case of poison and killing
loose furious beasts.

4 Blown 34.
Foster's 349
Hawke 443
Hale 44
Heling 32

But it is indispensably necessary to
make a principal in the second degree 4 Blown 353
that he should act and assist to the crime 3d Inst 33
and hence if a principal & he is found that D^r — 531
the prisoner was to assist judgment cannot Heling 77
be rendered against him.

The Accessory is one who is not the
principal abetting the offence or pres-
ent at the commission but is ~~done~~ⁱⁿ way
concerned in it either before or after the 4 Blown 35
fact. He must not be present for that
would make him a principal in the second
degree.

There are three offences which
doubt admits of this distinction. But only Hale 613
these may be Principals and accessories 12 Coke 81
in felonies - these are however some ex- 1 Inst 57
ception. In high treason all are counted 4 Blown 35
as principals.

Right you have what whatever will
make.

18 March 48 make one an accessory in Felony, while
D^r 489 make him a ^{Principal} in ^{the} Felony,
12 Coke 81. and this whether before or after the fact,
P^r 296.

There may be accessories. Gen. 9 in ^{the} Felony
Treason, Piracy, and generally in all
these Cases where the Crime is perpe-
trated. But in all and especially
these can be accessories only after the fact.

In Felony-Treason there can be no
D^r 18 March 481 accessory. The Law admits no aux-
iliary Crime 36 D^r 191 makes the highest or in the lowest
Offence, for it is said the Law will not
stop to discriminate between them. —

18 March 483. The Guilt of an accessory follows that of
18 March 482 his Principals, he cannot therefore be guilty
D^r 445 of a higher Crime than his Principals

Accessories in Crimes are of two sorts.
1^o Accessories before the fact,
2^o Accessories after the fact.

2^o Known 445. The Accessory before the fact, is one who
18 March 445 presents Commands or Commands another to
18 March 445 commit a Crime. But he must be about
when the Crime is committed. —

He who presents another to do an
unlawful act is accessory to all that

causes upon the Conviction of that act. ^{R. 475.}
But he is not answerable for any thing ^{G. 370.}
which does not issue directly from it. ^{48 R. 37.}
So if a Person is to that & and dies
in Consequence of the treating it is
nothing. ^{27 H. 446.}

Under one an accessory in
Felony it is necessary that the Crime be
committed. But it would seem from ^{Ed. Ray 1375.}
modern Authorities, that no Solicit or ^{25 H. 1.}
Commit a Crime is a misdemeanor tho' ^{6 Ed. 101.}
the Crime be not actually committed. ^{27 H. 446.}

So if one requests another to Commit
a Crime but before it is committed retracts. ^{R. 475.}
But still the act is committed. Then tho' ^{G. 370.}
one requesting would not be an accessory ^{27 H. 446.}
as it was not done at his request. ^{27 H. 446.}
He would however be liable for a misdeame-
nor for having solicited the Offense. ^{27 H. 446.}

Statute Felonies admit of no赦免 ^{See 24}
the old Statute is silent respecting them. ^{11 Car. 1. 1514}

But the said Conciliating of law intitld. ^{27 H. 446.}
ed Felony will not make it a man and ^{15 Car. 1. 1514}
accusable. The person so conciliating is ^{48 R. 37.}
guilty of a misdemeanor a reparation of ^{48 R. 37.}
Felony ^{27 H. 446.}

of Reform which is furnished at Com Law
by fact and imputation.

It is a Gen^e rule that all persons who
are present when a Felony is committed,
and don't endeavour to prevent to the ex-
tent of their power, are guilty of a mit-
demanded. Now the Law does not re-
quire impossibility, in this Case it
does not require a man to oppose him-
self to imminent danger. It must al-
so appear to the Jury that he was compelled to
commit the present in his mind to make him liable
D L H Infants are not liable in such Cases
for they are not liable for Crimes of
omission, as those before mentioned.

The accessory after the fact, is one who
receives secret comfort or assist. a felon.
Known to be such. This definition
if literally construed would take in
many which are not accessories.

D B C³⁸ It must be such assistance as tends
to prevent his being brought to Justice. So
D C³⁹ Considering whereby Tom Wilson knowing himself to
be at fault did not make one an Accessory if
it be not done with intent to prevent his
being brought to Justice.

The buying and receiving of Stolen Goods,
from a Thief did not take an accessory
at Common Law, but now by Statute they are
made accessories after the fact, from

1st March 450.
4 Bl & C 380
C. & B. 100 888.
yellow 4th

Our Statute makes them Principals. The
Persons so buying must know them to be
Stolen.

Stat. & Common
Law Theft.

In order to constitute an accessory,
after the fact the Crime must be Committed
before the instance was committed.

1st March 451
1 Hale 319
2^o - 622.

But a married Woman is excused
in assisting her Husband to escape and the
reason of this is that she is supposed to act
under his Command.

1st March 451
1 D^o - 4
4 Bl & C 380

But no other relation
excuses a Parent may not assist his
Child, or a Master his Servant & vice versa
Nor can a Husband assist his Wife.

In the Prosecution of an accessory
it has been decided that one is to be held guilty, 540
dicted to have been accessory to two ^{2d^o - 842}
offences. Forst that he has been accessory to either 1st
one will support the prosecution of the

Magistrate doubts this principle It is
a general rule of Law that an accessory
shall suffer the same punishment as the
principal.

^{12th June 39} Principal. But in that Benefit of Clergy
is allowed to confess after the fact. ^{13th}

It was formerly held at that an accep-
tation could not be tried till after the Con-
fession of his Principals; but the rule is
^{2d March 453} now relaxed and an accesor may be tried
^{2d Dec 455} at the same time with his Principals.
^{4th Oct 480}
^{Dec 323} But the Law now says that an ac-
cessory shall not be tried so long as his prin-
cipal remains liable to be tried. hereafter.

In England there are two Stat^s provi-
sions. 1st. doing that an accessory may be tried even
^{2d Dec 323} tho' his Principals have attainted or been
^{2d March 453} tried. but he is liable to be tried for
^{4th Oct 480}^{Dec 323} a misdemeanor and not as an accomplice.
and on that Stat^s. the rules of the Common Law
will prevail in all other cases. Statutes -

If the Principal is tried and acquited
the accessory must of course be discharged
and the rule is observed w^t this all the
consequence. So if judgment agst the Pan-
cipal is reversed it is "ipso facto" reversed
as to the accessory. At Com. Law vtd.
death of the Prince, &c. or his friends after
attainted does not void the accession.

But the death of the Principal after
consideration but before attainted discharge
the accessory, for there is no certainty of guilt
without judgment, is passed.

But the Com Law of England is now
altered by the Statute of Anne

26 Ch 3 23

Sect 110

If a Person has been acquitted on an
indictment for being an accessory he may
be afterward indicted as Principal both
before and after the fact.

But if one has been accounted as
Principal whether he can be indicted
as accessory before the fact is not yet settled.

7 Eliz 165,

22 & 23 Eliz 1674

I think if he is indicted as accessory
after the fact the indictment is good?

But then the question can be tried
all after the attaintment of the Principal
when this attaintment is not conclusive against him
the accessory and not even as the Principal
but he may have been attainted
contrary to law! The same inde- D. 353
pendent allowed to an accessory when
both are tried together.

Felony.

This is an offence which at common law occasions, at forfeiture of Goods or Lands or Cash. ¹⁷⁴⁵ The term Felony is a ¹⁷⁴⁵ "misdemeanour" or a general term it does not specify any particular crime.

It seems this term originally denoted the penal consequences of the Crime. hence ¹⁷⁴⁵ it has been used to denote the forfeiture ¹⁷⁴⁵ ¹⁷⁴⁸ Tresoroy is strictly a Felony because it is not a forfeiture. And it has long been classed as a Crime by itself and is not called a Felony.

According to his Description of Felony Capital Punishment is with its accessories ¹⁷⁴⁵ ¹⁷⁴⁸ commenced. so it is almost always ¹⁷⁴⁵ ¹⁷⁴⁸ followed by ¹⁷⁴⁵ ¹⁷⁴⁸ added. ¹⁷⁴⁵ ¹⁷⁴⁸ On the other hand there are some ¹⁷⁴⁵ ¹⁷⁴⁸ Capital Offences which are not followed ¹⁷⁴⁵ ¹⁷⁴⁸ by ¹⁷⁴⁵ ¹⁷⁴⁸ Felony. &c

The few "capital Felonies" used to include a Capital Murder or Capital Treason. It is almost always distinguished. It includes all Capital Crimes below "High Treason". ¹⁷⁴⁵ ¹⁷⁴⁸ Capital Treason is a death contract that may give ¹⁷⁴⁵ ¹⁷⁴⁸ Life

Offence amounts to a Colony it is under 1st Cal 637.
Said that it be punished with death. D^r 641, 7103.

Colonies which in England are called Colonies are called
so here. tho they work no forfeiture at Robroy. &c.

Homicide

It is the killing of any human creature or
Murdering. L^e There are three kinds viz 4th C^s 177,
Justifiable. Excusable & Felonious. — 1st Hawk. 105

Homicide is not necessarily Criminal. —

To justifyable Homicide the Law allows 2nd 283
of no degree of Guilt. — To excusable 2nd Hawk 537
Homicide it affords very little punishment, P^r — 108

The difference between justifiable and
Excusable Homicide is merely nominal

Justifiable Homicide, is of several
kinds. —

1st P When occasioned by Necessity.
So a Sheriff or his Deputy is justified in killing 1st Hawk. 105
cutting a Criminal sentenced to Death
by the offended Lord of his Country. He is
the mere agent of the Law.

To make a justification in such a 4th C^s 178
case the Law must require it to be done, 3rd Par 674
and require him to do it. — And nothing, 1st Hawk 105

And no other Person than he who the Law requires can do it. —

The Officer whose duty it is to execute what is required must do it in pursuance of that Statute, and inflicting the Punishment in the same mode the Law directs and — and if he does it in any other way he is guilty of Blasphemy and so an Officer Clerk or Head a Criminal intended to be condemned to be hung.

And for the Purpose of Justice the Officer the Sheriff must be paid 100/- &c. by a competent Jurisdiction. If he is not worth Cork the Officer and the Court would be guilty of Blasphemy for here it is 100/- or 130/- paid over paid even tho' the Person was guilty of a Capital Offence. — — —

But the Court having Competent jurisdiction should pass Sentence of Death when the Offense does not amount to a Capital Crime. The Judges say one guilty of Blasphemy is not the Sheriff for he acts according to the direction of the Law and the Subject called it within the jurisdiction of the Court.

2^o Homicide is justifiable when committed for the advancement of public justice.

As if an Officer is resisted in the execution of a Legal Process, he may use all necessary force and no violence to take the Prisoners and if he can't take them alive he must take them dead. —

17 Hawk 106

q Coke 88

17 Hale 494

2 M. & S. 650

If an Officer attempts to disperse a Riot and meets with resistance he may use all necessary force and if it is probable that the Effs of the person opposing him exceed those he has no warrant in which case he acts more under the Provision than under the Command of the Law.

If a Slave resists or flies from his Masters if they act without a Warrant ^{17 Hawk 106} ^{17 Hale 271} they may take his Servt if necessary But otherwise this must be an actual Slave and not at his present time.

This rule proceeds upon the ground that it is the duty and right of every member of Society to take a Slave.

If the Slave in that process is no Slave to Officer it will liable for the violence which

which he may have used in taking him,

^L
But if a private and individual attempt
Postle 18th to arrest a new innocent man on suspicion
of Murther and takes his life he is liable to the law.
But our Statute law acts at his own peril
for he is justified or not according to the
events of the acts on suspicion.

When a person is acting under the authority
of the Law Civil & Criminal is justifiable
Postle 10th or Criminal. In either case if he has
by chance been taken alive he must be let
him dead.

Postle 4th There are many Statute Law
Postle 5th which fall within this rule as see -
Postle 6th

Postle Mordicide is justifiable when
committed to prevent a forcible or also
cious Crime

It is a genl. Rule that when
a Crime in itself Capital is attempted
to be committed by force it is lawful to
repel that force by the death of the offender
But this rule does not extend to those
cases which are unaccompanied by
force. The Law considers every Crime to
accompany by force. Yet there is a distinc-
tion between actual force and the want of it.

24

No Person is justifiable in taking the
Life of a Person attempting to break his
Packets unless it is done with force. — Foster 271-3
1 Hawk 108.

So also if a Person attempts to break 1336. 3 180.
open a House in the day time it is not 1 Hall 485
justifiable to take his Life. — Feling 137.

So also if one attempts a Theft &c &c
but it will justify a Battery in a Civil
action.

If a forcible assault is made
on the Person of another and the aggressor 2nd Nov 489
is killed the Party attacked may justly Foster 273
on the ground of Self defense. If this is 1 Hawk 180
not justifiable but excusable homicide

A Woman may lawfully kill an
other who attempts to violate her Chastity;
and her Husband or Friends is justified Foster 274
in doing the same thing. — So may a 1 Hawk 108.
third Person injured and he confesses 1 Hall 488
homicide. he is justifiable on the ground Feling 137.
that he has a right to prevent the Com-
mission of a Crime which would be
capitally punished.

According to ancient & judicious justi-
fications might be officially recognized. 1 Hawk 105.
in Law. But now it must be given up. 1 Hall 478.

3rd Sec 67^o in evidence under the Genl. Spec - as a justification is a denial of the material allegation.

Justifiable Homicide is not pun-
ished at all - the very low import-
tance of the party is what quietts -

Excusable Homicide. - There is a
marked distinction between justifi-
able & excusable Homicide - the one is ~~truly~~
the other is ~~wrong~~ - in the one there
is no degree of Guilt - in the other a
slight degree.

Excusable Homicide is of two kinds. Viz.

1st Homicide by Misadventure

2nd Upon a Principle of Self Defense

The first is nearly synonymous with
accident. The second is voluntary & will
committed under such circumstances as
in Contumacious of Law Constitution no
crime.

1st Homicide by Misadventure is
when one is doing a lawful act, without
any intention of killing it involuntarily kills
another. It is most likely that the last to
have done. It has been decided that

where

when A^t is riding and B^t strikes his Horse
by which means the Horse runs over C^t killing 40
and kills him. It is guilty of Homicide 1^t March 111
by misadventure. — I see no fault of Foster 258^s
People in this Case for the rider is not
the agent he certainly is faultless. — *J. Goulden*

If a parent is correcting his Child
in a lawful manner should kill him
he is excusable on the ground of the law-
fulness of the act & so of a Master & Servant
Goulden. — *P. P. Parker*

But this rule does not Foster 262
extend to third Cases where the location is 1^t March 111
adversary. — Note to whom where the man killing 64
intended to inflict with an instrument Do. 2^t 1833
endangering the life of the person for in
such Cases it would be murder.

But if death accidentally causes in
consequence of an unlawful act the
author is guilty of manslaughter at
least and in some Cases of Murder. —

According to Mr. Hall, the unlaw-
ful act must be "malum in se"
and not "malum prohibitum," — and Foster 258^s
I believe there are no Cases contrary to Foster 242^s
this rule. — *P. P. Parker* 1^t April 134.
1^t March 112.

If the unlawful act is a fact —
P. P. Parker

^{Stodder 268} If ^{if} the homicide is Manslaughter.
¹⁷ But if it is felonious the act is Murder.

If one accidentally kills another in
17 Hawk¹¹² the execution of a malicious, deliberate
17 Hawk³⁷ design with an intent to do him so
17 Hawk⁴⁷⁵ only lame he is guilty of murder and
17 Hawk¹¹⁷ with & manslaughter surely for the said
accident it would have been & one intention only.

And in Gen^d if homicide causes
upon any unlawful act which com-
monly tends to bloodshed it is not ex-
cusable; it is murder &c a treasonable

And if one in doing a mere idle
17 Hawk⁴⁸¹ act, without any intention to kill, if the
tendency of the act is to commit & bloodshed
killed it is manslaughter.

But if the death was occasioned in
17 Hawk²⁶⁰ consequence of lawful sport & play
17 Hawk¹¹² or Cricket, it would then be homicide in
17 Hawk¹⁸³ misadventure since the act is lawful
but in the former case it was unlawful

2nd Homicide in self defense: This -
happens when one in a sudden affray
17 Hawk¹⁸³ kills his assailant in his own defense. This
is excusable and not justifiable

The excuse in this Case proceeds on a ground different from that in the Case of justifiable homicide. — This is that to intercept a Capital Crime attended with force, but to preserve ones own Life It must appear the only Probable means of preserving ones Life of escaping from great Bodily harm in order to defend ...

Feb C^s 184
Foster 273.
17 Hawk 108
D^o 113
Meeting, 128.

See the rule requires that the assault should be a violent one and that the party assaulted should be in imminent danger of losing his life or of receiving great bodily harm. Hence if this danger does not exist the homicide is not excusable.

So if the parties are equally capable of互相害 and procure one is not excuse to kill the other.

The distinction between one species of Manslaughter and the species of Homicide is very difficult and subtle.

But the true Criterion seems to be this. — That if both parties are actually fighting when the blow which occasions death is given, the slayer is guilty of Manslaughter. But if the party who Foster 276 commits the homicide has not done so 17 Hawk 481.

The fight, or having begun declines any
463 B. 184. further struggle. And afterwards being
Keling 51. clearly punished. While his antagonist tho'
acted his own destruction. But it is how-
ever excusable by self Defense.
This rule may frequently mislead-
But I know of no other so fitted.

Keling 58 According to some old opinions. It
Do. 261
B. 679 is immaterial whether the party of
D. 559 said or the party opposing committed
D. 659 the offence. But it is good to add -
1740th 113 that's the party making the attack
174ale 479 that's the party making the attack
1740th 276 cannot excuse himself if he takes the side
D. 278. of his antagonist during the affray

If the assault is made with an
1740th 113 intent to kill. But the assailant is
D. 123 beaten and kill and is pursued by
Keling 58 the other party. and then runs out from
D. 21 128. and kills him he cannot excuse himself

If two persons agree beforehand to
1740th 112 fight, and one is killed by the other
174ale 443 and kills him it is allowed on account
D. 174 of previous settled enmity
Keling 129
Exo D. 131. It is not to be understood that the
rule extends to hard cases where the
agreement to fight and the actual

Fighting is done at one and the same
time, for here is one act of ^{the} ~~of~~ ^{the} ~~same~~ ^{act} of Aggression.

But it may extend to what Case when ^{Hawthorne 112}
the agreement to fight was made at ^{Dane 135} ^{Hawthorne 112}
one time and the fighting actually
took place at another ^{Hawthorne 112}

Having been observed that in ^{46 B.C. 119} ^{46 B.C. 119}
the second of the Party, killing is guilty. ^{18 March 1847}
of Murder, and the Staff of the Party, ^{15 Hale 443}
Slain of a high Attainment, at C. S. ^{15 Hale 443}

This excuse of Self-Defence extends to
the chief of what are Civil Relations as

thus at Gloucester is excused in killing ^{15 Hale 484}
one who assaults his Wife, & of Master ^{30 Dec 1860}
and Servant &c also any Stranger may ^{4 B.C. 185}
take the life of the assailant if he is ^{15 Hale 487}
convinced of a Capital Crime & being done
without

The killing of an officer who is
attempting to arrest a man with ^{15 Oct 1855}
be excused, and this case tho' the Pro ^{22nd Dec 1888}
cess is illegal tho' it must be legal and
good on the face of it.

The excuse of Self-Defence must ^{15 Oct 1855}
always be given in cases as described ^{15 Hale 498}
Court of Justice ^{15 Hale 705}

2 Inst 1487 Excessive Hornicide is said to have
 15 March 114 been unmercifully punished with Death -
 Scotlaw 2820
 15 March 1887 But this is denied by modern authorities -
 Hale 425.

It has always been held on the old
 Statute 2838 partly convicted of excessive Hornicide is on
 15 March 115 bailed of Cause to Reward and restitution of
 Feeding 581 Goods and in England the judges usually
 tell the jury to acquit.

4 Feb 1887 unmercifully it was punished with a fine of
 15 March 115 use of Goods and Chattels --

This species of Hornicide does not ad-
 mit of punishment because it is not
 felonious.

Felonious Hornicide is the kill-
 ing of any human being without any
 justification or excuse. ---
 This definition follows from the division of
 Hornicide in -

Felonious Hornicide may be
 26 Feb 186 committed by destroying one's own life
 25 March 1820 or that of another and
 15 March 102 "He who puts an end to his own life is
 called a Felon-de-sé"

If one person causes another to kill
 himself and he does it for money or gain the
 Hornicide and the latter is not a Felon-de-sé"

Every Person is bound to be a "Felo de Robe"
which must be of years of discretion and in his 17th year 41st
night reward else it is no Crime.

Self-blunder admits of acceptance before
the fact. But not after. So one who 40th & 18th
proceeds another to kill himself is an
anchor.

For the sake of example it is. 17th year 41st
proceeded by the Bow Law, that a "Felo de Robe" 10th year 103rd
have an ignoramus friend and that do 34th & 35th
his Goods and Chattels be forfeited. 40th & 16th 387th
Do 387th

The second kind of felonious homicide
consists in killing three other persons without
any justification for excuse, and either
with or without malice, and this cir-
cumstance creates the distinction of -

Manslaughter and Murder.

The principal difference is that therefore 40th & 19th
there is without malice and the latter Do 17th
with malice. By malice is meant 17th year 25th
with only ill will, but any kind of unlaw-
ful or wicked motive.

Manslaughter is the unlawful
killing of a man without malice, except 17th year 45th
or justified & may be either voluntary or involuntary 40th & 19th

1st Art is ~~to~~ ^{of} homicide manslaughter. —
Officer goes out without a sudden quarrel
killed and one kills the other the offence is
homicide manslaughter.

So if upon a Challenge given by one
party and accepted by the other they go out
Meeting 115 immediately to fight and one is killed the
Officer 267 is homicide manslaughter.

Vol. 116 art. 3. Officer after the Challenge given by
each 16165 practices to one fight immediately so that
he is at one Challenge acts of force, which
is Murder.

If a person attempting to part
two persons who are fighting is killed in
Meeting 125 one of them the officer is homicide provided
Officer 272 that the party had notice that he intended
to do so. — 370 Article 66. to prosecute the officer. But if he had no
Doe 114 such notice the offence is manslaughter.

If a person is greatly provoked by the
misconduct or abuse of another by
hitting his nose, wallet, or his face at first
intend and he suddenly kills the offender
Meeting 1053 the offence is manslaughter. — This is
1st Art 470. sudden revenge, and does not admit of
Meeting 125, an alien reflection. But if the
Officer 274, in alien reflection. But if the
Doe 469, should be sufficient time for his passion to
(Doe 390) subside.

is Subtlety, the Offence would be Murder, for
hence would be Malice aforethought, &c,

This rule is not inviolable for tho, he
exceeds his courage immediately, but still
with a manifest intention to kill, or to
do great bodily harm the Offence is Murder,

Hale 454

Do 473

Hawk 126

Meding 127

D

Shoving a boy under the said of the House
by intent to kill, if the boy was killed was
Murder for hence there was a manifest in-
tent to kill

If a husband stirs a man in adultery, Hale 480
with his wife, and immediately kills him, Hengay 212
it is Manslaughter, but if he stays it for 480. 191.
a time sufficient for his wifing to awake
it is Murder.

It is to be observed that Sarcasm, words
or insulting Gestures or breach of engage-
ment or Threats on Land, is never suf-
ficient Provocation for sudden killing,
and in such case the Offence is always
Murder.

But if on the other hand when
Provocation of this kind is given and the
party abused Charles the other in such
a manner that it is apparent he meant
nothing more than moderate chastis-
ement and kills him, it is Manslaughter,

Hawk 124

Meding 65

Do 60. 64

Do 130.

Harter 310

483. 200.

Meding 130.

D

If it is laid down generally in Thelings, that
it is a sudden affray between a dald B.
1260 &c. & his friend & B. suddenly interposes and kills
Hester. 313. B. it is manslaughter, in this case
Theling 130 must be read as stood with some restriction.
D^o R 101 for if he should manifest an intention to
kill it would be murder.

Murder on a sudden provoca-
tion. Differs from excusable homicide in
that it is one case there is an appa-
rely 148. that in one case there is an appa-
rent necessity for self preservation to kill
the aggressor, and in the other no need-
sity at all it being an act of revenge &c.

2nd Irivoluntary Manslaughter.

Cod. Ur 830. This "ex. vi discordia" is always invol-
untary or unintentional. Both causes an
unlawful act which it is said
404 June 19th in many cases must be "malum in se."

If one accidentally kills another in idle
recreations 133. in an act which is "malum prohibitum"
Hester 259. The offence is the same as if it was an
offence 495. the offence is the same as if it was an
accident 27-37 committed at all. But lawful

1. Theling 479. If one accidentally kills another in idle
hysteria 2161
2. 282 and dangerous sport it is manslaughter.
3. Theling 134. as such it is unlawful
4. Hester 112.
5. page 287

25

But if the act is lawful in itself, and
is done in an unlawful manner, and Slg^o 481
death ensues it is Manslaughter, in Hobk 263
So likewise down a piece of timber in Heling 40,
a City, where People are Continually pass- 4 B.C. 1923
ing, without using necessary Care, & 1 Hale 472,

But tho' involuntary homicide ensues
in law the doing of some unlawful act
yet it is not to be presumed that homicide
ensuing upon the Commission of even 4 B.C. 1923
unlawful act is Manslaughter, & 1 Hawk 126
It will be in the prosecution of any felon- q Coke 91.
ious intent, or in its consequences lead Heling 111-17.
ing to Bloodshed, it is Murder. 1 Radb 457.

If no more was intended than a Civil
Wrastle, it will be Manslaughter.

Manslaughter is a Colony but it is
a Clergyable and the Offender is pun- 4 B.C. 5 193
ished with the loss of his Goods & Chattels. Do. 301.
and suffers by way also of Commutation
some Corporal Punishment, as Lancing
in the Hand, & such like.

At the instance of the party Cler-
gy, the prisoner always goes to the open
Court.

In London Voluntary Manslaughter
is punished with Transportation, Banishment
Whipping &c &c.

Our Superior Court have decided
that Murder Manslaughter, is
only a high misdeemeanor at Common Law,
and punishable as such. —

Murder.

The next species of felonies is
called Murder, or this word was anciently
used in England to denote the secret killing
of another. But Murder is now
described thus by Sir Edward Coke. viz.,
"When a person of sound memory and Dis-
cretion unlawfully kills any reasonable
creature in body and under the King's
peace with malice aforethought either
express or implied." —

By this definition Coke's contains
superfluous parts — I should define
Murder to be "the unlawful killing of
any reasonable creature with malice
aforethought either express or implied" —
This I suppose to be a complete definition.
Now this is purposing this subject I shall
consider the two last by Sir Edward Coke.

1st "Show a ^{portion} of sound memory and discretion". Now there is no need of these words for they are always implied. — 4th &c. 20. Every offender must be of sound memory and discretion. —

2^d "Unlawfully Kill or w^tched." - The unlawfulness of the act arises from the killing without warrant or excuse. - Hale 425.
The killing must be an actual one on assault with an intent to kill is not Murder but a high misdemeanor. - Webster 196.

The act of directly taking away the
life of another is not only the highest evil
also an act of which the professed Contra-
guerre is death. - Beach 182
Aug 2 184
Beach 144

So killing a man with ~~403~~^{each 144} Q⁶, 190,
Pained, is within the rule. — The modes
are infinitely various. But the rule is in-
tended to extend to all.

So also the countenance of Bro. Sho.
caused out his side gather'd, as it
will on a cold morning which occa- ^{ft. Scale 431.}
sioned his death this day with the rule. ^{4336. 197.} ft. Scale 1183

So where a woman coffee stick shot
to stand in the woods and it was killed
by a kite she was guilty of murder.

Another Case is where Parish Officers
Leave 141 Carries a Child from Parish to Parish, by
which means it's dead.

^{Aug 1850.} If a Sailor knowing a prisoner to
Stab 1578 be infected with a Contagious Disease
^{Aug 1883.} puts another prisoner into the same
March 119. 20010. in which means he does it - is
within the Definition.

So if a Person has a Hatchet accustomed
to do mischief and he pursues him to
March 118 go aboard, and he kills another he owned
March 430 is guilty of Manslaughter, and if he
430^s 197. means him out designed by or on purpose
tho. Carely to frighten people, and make
a spark he is guilty of Murder.

A person may be deemed guilty of
March 193 the killing tho. the immediate act he
D^r - 118 done by another, as when he invites a
Madman to kill another.

It is not settled whether bearing
430^s 196^r false witness agt^r with an express
stated 322^r intended to take away his
March 44^r life, or intended to take away his
March 119. life so that an innocent person was
condemned and executed was murder, or
not?

In Cases^t it is provided by Statute
that whosoever shall bear false witness against
another and ou purpose to take away his life ^{St. Con. 182.}
S^tl^d shall be punished with Death ^{and}
tho. the innocent Person is neither condemned
nor now executed.

If a Physician advises to a patient
a potion or applies a plaster which occasions the death ^{1 Hawk 131}
of his patient. It is forfeited by misadventure ^{1 Hale 430.}
But it is said that if a Doctor ^{3 Bac 564}
ministers he is guilty of Manslaughter. tho. ^{4 B. Com. 197.}
this is now denied to be Law.

No person can be adjudged to have killed ^{3 Bac 564}
another unless the Death happens within a ^{of} Year
year and a day after the injury is done. ^{A year}
In computing that time the whole day on
which the Injury was done is the first.

But if the Party die within that time
it is no excuse for the Prisoner to say that
he might have recovered had he got perfect ^{Holin. 267.}
medical aid. But if one gives another ^{1 Hale 420} a wound
and not mortal and the person is kill-
led in consequence of the medical advice
or application the Person who gave the
wound is guilty of Murder.

A Person intended upon one of his
eies of killing Cant be Convicted upon evi-
dence of a totally different kind or species.

If one is intended for wounding and
§ 1st. is convicted upon evidence of shooting with
a Gun &c. & kills without the only trifling
circumstances as if a wound
given with a sword, is alledged together
with a bullet that difference if in-
investigated the evidence will support the
indictment.

If it is intended as a punishment
of the first degree and it is a punishment
of the second degree and without the intent of
killing § 82 appears that the Person is Convict the in-
tended killing. Sentences can be supported.
§ 32.

If it is laid down as a General rule in
each that the Indictments must state
the Person gave the deceased a mortal
wound or bruise. But if you use this
rule § 82 can be true in these cases only in which
some is used and not in those in which
it is not used as Strangulation, &c.

The next branch of the definition is
"the killing of a reasonable creature
and under like circumstances" And

An alien and an Englishman are therefore within this rule. I wonder who will bring of any person both an alien enemy 1766 433 and friend of person is within this rule.

"In being" - man no person can be killed unofficer being. So killing an Englishman Child is not Murder. But it is - 43 B&C 198 not "in offe" for this purpose. Who is 2d ac 665 is for, making her a Devil. - - - - -
"Killing an unknown Infant is a high crime" - - - - -

"But if the Child in the care of a - 3d ac 50
poor is born dead, and dies of the wound 1766 121
it received in his mother womb it is still 43 B&C 198
dead. - But the death in this case 1766 433,
must happen within a year and a day;
from the time of the injury received. - - - - -

"A reasonable Creature." But this is
meant a human Creature. for a Devil
has no reason yet it is not lawful
to kill him.

If one Country another to 1766 121
kill a Child unknown, and the Child is 1766 127
killed after its birth in pursuance 1766 426
of his request. he is an acceptor. - D. - 433

There is a Species of Murder created by Stat^e distinct from all others, as no
the will of God can be - It is provided by
Stat^e that if the mother of an illegiti-
mate Child, endeavours to Commit it
with her, it shall be death. The Mother
so condemned, to be guilty of Murder.

^{3d} Dec 1608. unless she can prove her own innocency at
25th March 1619 death which the Child was born dead. -
^{2d} April 1620

4th Oct 1682. But if a person shall of late years
it has been usual in England to require
some kind of circumstantial evidence that
the Child was born alive before their
other Constrained prosecution is admit-
ted to Commit the Prisoner. -

We have a Stat^e in Conn. which
New Stat^e provides that in such Cases the re-
Conn^P 302 man shall stand upon the Gallows with
a rope about his neck for a certain
length of time.

The next Clause of the definition is
"with malice aforethought." This may
be "aforethought" or as it is termed mal
ice "premeditated" is the grand distinction
which distinguishes between murder from every
kind of killing committed.

This malice in Contumelious, &c

is any wil design the death of a wicked
perjured and malignant heart. It is
not merely设计, and it will. 4B&C. 198

Foster £50
Thebaud £20
Do £2150

It is frequently laid down in the Books
that the Courts and not the Jury are the
judicators. - But the meaning of this is that
the Courts are to determine from the Ed Ray 1493
facts found by the Jury, what amount is
malice, or what it does constitutes malice 18 Burton.
See - The Jury are to determine whether Bacon 396
or the facts exist above which the Court do 474
are to determine whether there be malice
or not. 1897.

This malice is either express, or
implied. It is said to be express
when one with a deliberate, and formed
design to kill or injure any individual 4B&C. 199
does in consequence of that Design kill Foster £51.
him. 18 March 1911

It is said to be express when one
indicates an intent to kill mankind
So if a person shot a discharge a ball
from a pistol among a Crowd of Persons
it

If one kills another in a deliberate
Duel, it is murder by express malice. Faeling 129.
In this Case there is no excuse for the Ball. 80

party willing to say that he accepted the
Challenge reluctantly, or that he was with-
out attack'd. for have it a delicate and
formed design, either to kill or to do
great bodily harm.

So also the Second of a Person who
1760 & 1764 kills another in a Due is guilty of
D^r - 451 Murder by except malice

Giving a Challenge is a legal provision
3 & 4 Eliz 581. not in England and in Conn^t it is so
by Statute.

If a Person upon no provo-
cation at all or upon a very slight,
1760 & 1764 kill another and kill'd him
is guilty of Murder by except malice.

Blackstone calls the above
instances of malice implied, Hawkins
calls it except, which is correct.

So also if one upon a sudden and
1760 & 1764 just provocation kill's the Party who
killing 1764, kills him, but in such a manner as
1760 & 1764, indeat^r cruelty and凶恶 he is guilty
of Murder by malice except in ab-
staining a boy to a Master tail.

So also if anyone is sudden affray one killing &c
kills his adversary, but when, in either of his 184 & 185
passions, he is guilty of Murder by malice
esclusif. and want of Manslaughter. -

Malice is implied when the killing
is in consequence of some unlawful act,
which was intended entirely or principally 4 B.R. 200,
by some other purpose than which kills ^{Malice 111} killing 111
the person, as where a person discharges ^{No. 117} Hawk 129
a gun at a fowls with an intent to kill ^{No. 120} No. 120,
and instead it kills some other.

The unlawful act in this case must
be a felonious aider to constitute Malice.

I should define express malice to
be that which is ^{pointed} fact. Contra Hawk 120.
with the act of killing, and implied ^{of course 81} of course 81
malice to be that fact which Contra with ^{statu 261.} Hawk 436
the act of killing only by implication ^{Hawk 436} D^o 441-467.
of law, by legal definition, and not
in point of fact.

If one kills an officer in a struggle ^{Each 115}
to escape arrest he is guilty of Murder ^{No. 129} Hawk 129
by implied malice. D^o 135-368.

And in this case it is no excuse
to say that the receipt was void. Now,

Now is the Officer obliged to conform
him for what Cause he is arrested. At
1st Inst 1st ⁶⁸ Public Office is never bound to shew
of Coke 68-8, his warrant but in Case of a private
Tutor 137 No 311-18, one it is different, he must produce his
warrant.

And what goes lately done -
4th Inst 308, in the Court of B.R. Shaks Dhen
McNally, one named as Officer and causing to
make an arrest, the Prosecution is not
found to shew that he was an Officer, but
that he was acting as such.

The Committee is "viewed favorably" -
malicious. If there does not anything in
McNally 546 the Circumstances of the Case which will
Foster 235, equal the Offense, the accused must
McNally 277 take the burden of Proof on himself -
It is not inconsistent with the Prose-
cution to prove any thing & with the death.

It follows then that all homicide
is malicious, and of Course amounts
to Murder unless -

1st When justified by the command or pro-
mission of the Law. -

2nd When excused by accident or self-
Preservation. - Cr.

3^d Or when aggravated into Manslaugh-
ten by being either the involuntary Con- 4 Bl. 201
sequence of some unlawful act -- or
voluntarily occasioned by some sudden
and violent provocation.

The Punishment of Murder is Death.

This was formerly a Capital Offense
but now by three English Statutes 4 Bl. 201,
taken away from Misdemeanors, & now 1st Hale 450,
comes a Doctor, and Counsellor in Bulk Do. 631.
that Statute don't extend to Accessories after
the fact.

The punishment is the same in Convn. ^P

The Sentence of the Court in the Case of Convn. 3 Bl. 200,
of Murder, and of most Capital Felon-
ies, is "that the Person be hanged by the
neck until he is dead."

If a woman who is pregnant be Con- 4 Bl. 394
demned, execution must be stayed un-
til her delivery tho' she may even in 2 Bl. 687
this situation be brought to bed, and Finly 478,
receive sentence.

The execution of a Condemned Felon 2 Bl. 400
is never completed until his death. 2nd Hale 452.

There is a species of Murder more,

more atrocious than Common Murder
 48 Ch. 202 which is Called Felon's Yearson. Because
 Foster 107. It involves a violation of Private Life-
 D^o - 324 gained - It is always more than Murder
 D^o - 330 in its most atrocious form.

At Common Law many Offences were
 Called Felon's Yearson. Which are now
 so now.

Nothing is Felon's Yearson now but a Murder
 By Death of Charles 3rd. no Offence
 48 Cal. 141 can be Felon's Yearson. But in these Cases
 48 Ch. 203 1st A Servant killing his Master.
 1st Ch. 133 2nd A Wife her Husband. and
 3rd An Ecclesiastic his Superior. -

1st Ch. 1323 This Killing must be such as would
 immediately 574 make it Murder in any other Person

1st Ch. 380. Felon's Yearson always includes this
 48 Ch. 203 or death Murder does not always in
 1st Ch. 133 exclude Felon's Yearson.

57 Ch. 142) If a wife procures a Strangler to
 1st Ch. 132) murder her Husband the Infidelity of
 Strangler at an execution. -

1st Ch. 132) The homicide of ones Husband or Strangler
 Powder 886. wife is Felon's Yearson.

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So also the murder of a Master
by one who has formerly been a Ser-
vant is Petit Tresor, if the design
was formed while he was a Servant of
the Master. Hofre. 99
Whar. 263
Rosen 260.

But the murder of the Father by
the Child is not Petit Tresor unless
the Child is by reasonable Construction
of Law the Servant of the Father. If the
Child is emancipated or is 21 years of
age the murder will not amount to
Petit Tresor unless the master a new Con-
tract with the Father to serve him. -

Petit Tresor was formerly a Co-
-ice officer but now the Co-ice officer is Master Whar. 133.
away, and also from acceptance of the
jacket - The punishment is Capital. 432. 204

On an Indictment for Petit Tresor
a man may be acquitted and then Each 399.
Convicted of Murder

Aston

483rd 220. A Potion is occasionally burning without
186th 58th or without of any other Person.

460th 20th. Not only the dwelling house all the
179th 10th indicates which are houses of it and are
483rd 22nd without the Qualification and subject of same.

And it seems that at Corn Law, a
179th 16th Bale filled with Corn is a subject of
483rd 22nd arson tho' this would make without the
Definition. But a stack of Corn is not
a subject of arson.

179th 10th The burning of a frame of a Cause
179th 28th or not Aston. Because it is not within
the meaning of the word 'house' -

The Potion is the subject of Aston.
Decr. 6th It must however be described as a dwelling
being & cause belonging to the Corporation
to which it does belong.

It is said in article of the Books
that Aston may be committed by
burning over own House if another.
Chas. 179th 5th It is burnt in consequence thereof
483rd 22nd. But it is clear that the burning of one's
Decr. 21st own House is not Aston the offence.

Consett out in Curious out own House
but in Curious that of another. —

That the Curious & ones own House
cannot be aliened by Person next away from
Principice next authority which is settled 1st March 1687
for if one seised in fee or for Years of Croke 177.
a house & court and does make & let more
endanger any other bouter with his. he
is not guilty of alienation.

I take it to be clearly settled that
if one seised in fee. or possessed for Years, Trotter 115
of a house in a City. Court. & with an Crooke 338.
estate to leave another man's house Theling 29
but in fact leaves his own only he is guilty Seach 2749.
of alienation.

But the modern Cases go little
further for if one in possession of a
house by a lease agreement for a Year each 219
for Years. tho' he has no lease with others. D^r 285.
and maliciously leaves it. he is not guilty
of alienation. So also of a tenancy
from year to year.

But the Curious & ones own House 1st Hale 508.
in a City. is a slight Discrepancy. 1st March 1687
Theling 29

on the other hand if a Tenant
leaves a House in which he owns a.

a resection book in which another dwells
Broder 115^o he is guilty of arson. - for the House is
480[£] worth for the time being, owned by him
leaving the particular house

In Court this offence is calculated
S. C. 1820 by Stat^e. That it is much the same
as at Common Law except that by Stat^e
the malicious burning of any House and
House or Barn, is arson.

Our Stat^e punishes the burning
in the same manner that it does the
burning of a Ship or Vessel tho' the burn-
ing of a Ship or Vessel is not arson.

Right to pursue the definition, as
to the burning. It is now settled that
1800[£] or less a mere attempt to burn nor an
attempt to burn unless the house is actu-
ally burned, is arson. - But the ac-
tual burning of any house however
small, if it is a wilful and malicious
burning it is arson.

Placing a single Shingle on the roof
is arson.

But the burning must be malici-
ous and willful. If it had no intent.

the House of Assembly their negligence, or ^{Flaoden 495}
accident he is make guilty of Misdemeanor. ^{1 Hawk 167}
But is liable "Civilius" only. ^{1 Hale 469}

Misde is a Com. Law Felony ^{14 & 15 & 32 & 33}
inflict with death. It is not a Clergy - ^{2 Hawk 481}
Alice offence and was made so at C. Law D^o. 503.

Punish of Clergy is also denied to be
excessive before the fact, but after there after

Under our Stat^e in Conn. if a
Person of 16^r year or over Commit
Misd. he is punished with Death if
Prudice or Hazard Happen to the Life
of any Person.

This is too vague a def
indeed and I doubt whether our Courts ^{St Conn 182}
would give any Construction at all to
it unless the Party received some great
Corporal injury.

I presume if a Person
under the age of 16^r should Commit An
Act and Prudice or Hazard Happen
to the Life of any individual he would
be Punished for a slight misdemeanor.

Our Stat^e also provides that if
any male Person of 16^r years or over

Commits arson and no ^{re}judice, or
hazard happens to the ^{rest} of any person
the offender shall be imprisoned in New-
gate for a term not exceeding 7 years.

St. Const. 185.

D. 550

But if a female shall be im-
prisoned in a workhouse or jail.

The Stat^e says nothing about the age
of females. Look at practice it is well
understood to be the same as in males.

Burglary.

Burglary is the offence of breaking into
the dwelling-house of another but the
403 P. 2024 might be called with an intent to commit
it March 159 a felony.

2d Ed. 60

In this Definition it should be in-
cluded a Church and the walls of a Town
and so which are now the subjects of Burglary.
See Ed. 583.

When the building is a private one,
March 152 it is necessary to break the word "mansion,
1 P. 335. but it is not necessary when a Church
or the walls of a Town are broken open.

403 P. 225.

The term "dwelling house" includes
Sect. 320 all buildings which are ^{for} built three-
feeling 27 ft. or within the Cinty 2.
G. 3 P. 842.

The Cottlage is that portion of ground which is enclosed with the Barn-^{1st part 103.}
Snow-House by one Continued fence or is each 145.
connected with it by a fence.

A single room may be consider'd
as a Mansion-House if the Owner ^{1st part 103}
or either Landlord does make Lodge in it ^{Do. 164.}
and enters at a different door from that ^{Do. 164.}
at which the lodger of the room enters. ^{Feeding 83.}
But if the Landlord does lodge in it and ^{Leads. 90.}
enters at the same door it is one Mansion ^{Do. 278. 304.}

If it can't be a Mansion-House it is
in which a Person dwells and lodges and
the Lodger makes it his Dwelling-House.
Lodging is necessary to make a Mansion
Haus. For the proprietor of Bunglary-House ^{1st part 104.}
an unincapitated House can't be the Sub-^{1st part 558.}
ject of Bunglary. ^{4 B.C. 225.}

If the owner loans a house
within the Cottlage to B. and B' does
make Lodge in it it is not a subject of
Bunglary at all. Scut if B lodges in the

If it is not necessary however that some
Person be actually in the House at the
time, the Bunglary is committed. See if it
is.

4 Coke 40. is a House in which a Family ordinarily
Foster 77. resides tho' they have left it for a time
1 Hale 55. still it is a ~~Shambaw~~ House and a Sub-
Steeling 46. just of Burglary.

The House of a Corporation is with-
out each 67. in the Definition provided either of the
Foster 38. Officers or any other person lives in it.

Steeling 145. It is now settled that a House which
1 Hale 162. one has lived and moved into it a Park
1 H. Ray 276. &c his Goods look make his Family is a Sub-
Foster 77. just of Burglary.

With a Tent or Booth is not a Sub-
4 Coke 220. just of Burglary even tho' a Family re-
1 Hale 164. side in it for it is not a House. —

The Statute of Currens has extended
the subject of Burglary. —

Under this Statute Burglary may
be Committed on any Shaff. where Goods
are deposited tho' no Person lodges in it
now ever did. — Now in the Con-
struction of this Act Courts have gone
a great way. —

It has been decided that
Breaking down a Schoolhouse the fore part
of a Shaff. or a Cooper Shaff. is Burglary

Now I conceive there are two Burglary
going upon this ground you may
make Breaking open a House which has
nothing in it but one nail. Burglary

By Goods, you see is meant that
I conceive such as are intended for Sale, St. Conn. 184
or traffic in These terms should be used Brook - 63.
in the same manner as Merchants use
them. -

The ~~Conn~~ Law requires that the
House should be a Dwelling-House. Then - Search 243
for you must name the owner in
the Judgment.

"In the night season" - It was
formerly holden that from the time the ~~sun~~ set half past 5 o'clock 500.
Such break down etc. it rare again was yester'day - 6.
the "night-Season" - But now it includes 12 noon 160.
The time between the evening and the morn 1. half 350.
ing. twilight. And if that do much ^{about} 22 M.
day-light. that one can clearly discern with
the countenance it is not "night".

The Description requires the "breaking"
the House as well as breaking
therefore "breaking without breaking"
or breaking without entering is not
within the Description.

Secct^y 67. But it is not necessary that the
Secct^y 342. Breaking and entering the one and the
40d^l 336. same time.

Now the breaking may be made
Secct^y 107. only by breaking open the door. But by
R. Hawk 160. lifting up a latch - picking a lock or
Steeling 67. removing a fastening of any Description. —

And it is settled that an entry thro'
R. Hawk 160. a Chimney, is a breaking without the
Definition, or that is as much closed at
the nature of the case will admit. —

But the breaking open of Chars.
Secct^y 188. Cupboards, &c within the house does not
Steeling 31. constitute Burglary. —

R. Hawk 160. But the breaking of an inner door
Steeling 67. is sufficient breaking to make it Burglary
R. Hawk 160.

If one assaults a house with an
R. Hawk 161 intent to rob it, and the owner opens the
40d^l 326. door to drive him away, and he thereby
Steeling 43. enters the breaking it is Burglary. & because
R. Hawk 602. the entering was done ascertained by a felonious
R. Hawk 333. intent. —

Whether breaking out of a house
is within the law. It shall be settled by the
C. S.

Con. Law. Cap in England by the Stat^t 13 Henk^t 161
of Anne. That is declared to be within the 1. Hale 554
Definition. - We have no such Stat^t Conn. 4 Bl. C. 227.
^P D^r 354

And every ^{the} proceed by force is Burglary
as much as tho' proceed by force. 13 Henk^t 161
So if one is let into a house without the
tress of burglar, and robs it. Pitts^t B. 227.
Feeling 42

If an inner door can be opened. It
is settled. that if a servant enters the room Feeling 67.
of his master, or any other person enters the 2d Hally 501
room of a lodger. and the same cause with
intend to steal. It is Burglary.

If a servant conspires with a stranger ^{Aug 1881.}
to enter a house and lets him in ^{ad.} ~ 4 Bl. C. 229.
both guilty of Burglary. Pitts^t B. 227.
Hally 504

The least entry with whole or a
part of the body, or with a hook to take ^{Grotter 108}
out articles, or with a weapon of offence, ^{13 Henk^t 161}
is Burglary.

And in consequence of this
rule if one pull a key into a door and run - Deact 342
back and then run away. It is Burglary. Pitts^t B. 227.
For this is both an entry & a breaking. But if he
comes that is not law. See a similar case in Deact 342.

¶ On an Indictment for breaking, entering and stealing. See it acc wth & of the Secch 84. breaking and entering. He may be convicted on the same indictment for stealing.

"With an intent to Commit a Felony - therefore shew and Prove a felonious intent and if there is none it is simply a trespass."

It has been decided that a steward who was away from his master, and returning 30 turns and breaks open his master's house on D^r 2^d 07. the night before in order to get his own money. Haled to which he had left is held guilty of Burglary Hawk 104 So a person may enter to speak a word or to take his own property without being guilty of Burglary.

Steg 481 It does not make any difference 480. 228. whether it is a Stat^r or Common Felony. 1Bac^r 330

It is not necessary that this felonious intent be carried into execution as a bare intent 1Hawk 159 breaking and entering with a felonious intent is sufficient.

After one has been acquitted on an Indictment for breaking the house and stealing.

Stealing the money of A and is convicted
for the same & stealing, and Stealing the a 2d Part 52.
money of B. the Document cannot be held 30
maintained. - for Stealing the Money is P.D. 52,
not Burglary. To be sure he may be
prosecuted for Stealing the Money of B.

Burglary is a felony at Common Law but if 4 B.C. 228.
is a Clergy a ~~fel~~ one. But the Benefit is 1st Part 165
not taken away and from accessories before
the fact. - P.

In Comm^r the Punishment for
the first offence is Confinement in Newgate
for a term not exceeding 3 years. for
the second not exceeding 5 years and for
the third offence to life. -

This is the punishment in Common Cases St. Comm^r 184
But if a person in Committing Burglary is
guilty of any personal abuse or violence or
is armed with dangerous weapons he shall be
sent for the Clerk Office. be imprisoned
in Newgate for life. - This is too
severe as a rule of Punishment. -

It has been decided that an indictment for
Burglary need not be on the Statute. 11 Part 56

The same distinction between males and
females is to be made here as in Robbery. -

Larceny

This is the most important branch of Criminal Law, to a person who intends becoming a Practitioner.

Larceny, Latrocinium, is that which in common language we call Theft, and is of two kinds Simple and Mixed.

Simple Larceny, is when there is no ~~any~~ accompanied with any legal aggravation.

March 154

Mixed Larceny includes in it the stealing from such a warehouse or shop.

1st Of Simple Larceny. This is feloniously taking and carrying away the personal Goods.

Simple Larceny is also divided into two kinds Grand and Petit.

By a rule of the Cons. Court if the Goods stolen are over the value of 12 Pences it is Grand Larceny. If of that value or under it is Petit Larceny.

The only difference between Grand & Petit Larceny consists in the value of the Goods stolen. Some rules laid down at the same time will apply to both.

There is however a difference in the
punishments. --

If Goods are stolen by several persons over the value of 12 pence they are all guilty of Grand Larceny &c &c, there can be no division to reduce like to, Hawk 145
Petit Larceny. 18 Hale 531

So on the other hand if a few persons steal under the value of 12 pence each 155, any number of them on the same day and from the same person it can never be made Grand Larceny.

To pursue this definition there must be a "taking" either actual or constructive from the possession of another.

And it is laid down as a general rule that every Larceny includes a trespass 4 Bl. 230, 1834
affable if the accused is not guilty thereof 24
of trespass in the taking. See Carnett, Parker 81
be guilty of Larceny.

I would however remark that this rule is not law, as I shall show presently
by adducing some later decisions first
in the book of it. A constructive
possession is a right of property, so -

18 Feb 480. If one finds Goods in the hands of
 42° 48' depositary & have a Constitution, ^{legally effected}
 70° 7' in their possession.

If one finds Goods and Conveyts.
 4 Mar 480. There as his own and or only let them be
 1 March 484. in want of title of Larceny tho' he does it
 "in a state of passion," - if he has no title, i.e.,
 i.e., Gustaff.

18 March 484. This is not Law according to
 2 Mar 479. latest decisions. - as above.

But it is said if one obtains Goods
 of another with an intent to Steal and
 embezzles them. He is guilty Larceny. -

18 March 485. In obtaining a Bill of Exchange under
 Article 81. Prostence of Discounting it, and then keeps
 back 203. in it. The Prostence in this Case is
 D^r 231.297 defined - upon the Law which will not be
 D^r 355. Sufficient.

The Prostence of this is still con-
 sidered as in the money. But this for the
 Prostence of Larceny only. -

But if one applies to another to
 back 75. if you have Goods back with an intent
 D^r. 358. never to pay for them and the carrier
 D^r. 401 does them off him and he runs away with
 them. He is make guilty of Larceny. - Nor

Now the difference between a Bail
which obtained with an intent to Steal
and the Purchasing Goods with an intent
to defraud, i.e., to embezzle them, is,
that in the latter Case the owner part
ed with both the legal and actual posse-
sion of them; whereas in the former he
did not. —

If one obtains Goods without a
Refusal, with an intent to Steal them ^{2d May 1850,}
he is guilty of Larceny ^{Stealing 43}

So if goods are taken on an Execution ^{1st March 1860}
which was issued on a Judgment obtained
by Fraud, practised outside Court. he is
Guilty of Larceny. — Here the Receiver
and Judgment are both void. —

These Cases are made Larceny under
the Gen^r Rule. But modern Cases lead
to alterate this rule as to the Trust, after
in "nothing." —

I take the Gen^r rule to be
this that when the delivery of Goods is
for a specific purpose, and its Counter
mandable by the Owner, he has a Con-
sidered possession, and therefore the em-
bezeling of these Goods is Larceny. —

There are many Cases in Support of this rule.

It was decided at the Old Baileys in
1779 that a watch taken to England as
stolen was given to Clegg and released and
he never returned it was guilty of Larceny.

Again where a man delivered clothes
to another ashore to man and the man away
with them. He was guilty of Larceny.

And in another Case it delivered
Monk 185 a parcel of Guinea's to exchange them
with for other money and the man away with
them. He was adjudged guilty of Larceny.

Again where the Goods were delivered
Each 142 and for safe Custody also the person to whom
D'P 42 D 349 they were delivered embezzled them. This was
considered Larceny.

The wife Clegg the Son of a merchant
she had drawn and the Authorities
to support it. that all these examples
which don't amount to Larceny by the
Old Rule, are made to be the New. as
in the Case of finding Goods. and I
consider this to be Larceny under the
New Rule.

In the Case of the Carrier,
and in the Old Rule he was not guilty,

of Larceny. & whether this Case is exactly the same as that of the Carpenter, Tinsman and Watch-maker.

If it was always Considered and intended
the old Rule that if a Carrier opens a
Case of Goods and takes some of them out
or draws liquor from a Cask &c. it
is guilty of Larceny;

But it is perfectly clear upon either
principle that if the Carrier having Con-
veyed the Goods to the place of destination
takes "a sum of money." - He is guilty
of Larceny. So also if the Bailee
should take the Goods to a different
place from that to which he which he
was ordered to carry them, and should
interfere with them he would be guilty of
Larceny. You have said Bailee is
a steward to the Bailements - He is not
Bailee to go to Stafford, when he was
sent to New Haven!

If one sells a Horse or any other
Person's Property to another and he
on delivery does away with it, and

Seach 401
2 McNally
592.

entergizes it, he is not guilty of Larceny,
and the reason is that there is no property
only remaining in the House for ac-
cording to the terms of the agreement he
is entitled with all his Jefferson both Con-
structive and Actual.

No also of one lets a House to another
and the innmendation rides away with
Seach 413. him and Consett him do his own act.
Do 358) he is not guilty of Larceny.
Do 401. 7th Sep 92 If however there was an original in-
McNally 592 tent to Steal, he would be guilty of Larceny,
4886. 730.

Note there is in this Case no right of
Countermanding in the Owner before the
time for which he lets his House is clasp-
ed. In Thiscase there is no Constructive
possession in the Bailor during the time,

From what has been said we seem
to infer the following Rule "viz."

1st When according to the terms of the
Bailment the Bailor has no right to Con-
tinue at the time of Conversion the em-
bezeling is not a taking with the
definition unless there was originally no
intend to steal. Consequently the taking
of a House, and Consett him during the
time

time for which he was hired is no bar
any.

P^r 2^d If the Bailee has according to
the terms of the Contract a right to
countervail the delivery at the time of
the Conversion. The larceny is Larceny;
Now in this Case there is a Contra-
dictive possession in the Bailee at the
Conversion.

P^r 3^d If the Bailee had an intent
and with an intent to steal - and after
quenching his the Bailee is withheld.
Defin'd. I hold this is true, whether
there is or is not in the Bailee a right
to countervail at the time of Conversion.
The original felonious intent is sufficient.

The bailee upon delivery of the Goods
know the Bailee to the Bailee is held. ^{§ 3 C. 236.}
Larceny. - It is not of itself a larceny,
but evidence of a felonious intent.

There is a distinction taken at C^o 8
between a Servant and a Common Bailee.

By C^o 8 if a Servant runs away with
Goods entrusted to him. He is made
guilty of Larceny. - for it is Considered as

1 Hawk 89. a mere Child injuries a laceach of Knuts?
 Do. 138. : But by Statute he is guilty of Larceny.
 1 Hale 584 if the Goods amount in value to 40.
 48 & C. 230 Shillings, and the steward is of the age of
 18 years or upward.

But since these various decisions
 determine the Courts would decide that
 the Larceny take C. & C. for this Case is Proven,
 by that of the victim or woman.

But at the C. & C. if the fact is not Proven.
 1 Bl. 84. he is liable only for Care or overage of his
 1 Hale 505. of his master's Goods, and the embezzlement.
 1 Hawk 135. it is a taking without the definition. and
 Do. 136. it is a taking within the definition. and
 if with a felonious intent it is Larceny.

If Goods are Stolen from one man
 1 Hawk 136. and afterwards are stolen from the Ship
 2. Mc Hall by another man. the latter is guilty of
 589. the taking from the true owner, for the
 other takes no right to them.

If one steals Goods in the County
 1 Hawk 136. & it is afterwards carries them into
 2. Blac 473. the County of B. he is guilty of a felonious
 1 Hawk 139. taking in both Counties and may
 be prosecuted in either.

But this rule could obtain when
the Goods are taken in one sovereign
State and Carried into another by it.
The U.S.A. - For one State is not
Supposed to know what the Criminal
Law of another State is - and that which
amounts to Felony in one State may be
simply a trespass in the other -

In Conn. however the Ct. have
decided differently and have said and
sent to New-England persons who stole in
another State. That if Committee of the Ct
of Errors would decide as I have laid
down the rule. Judge Patterson
so decided in the District Ct of N.J.
8 years since.

If the wife of the owner of Goods
delivers them to a third person and he
carries them away he is as guilty of
Larceny. - The wife cannot go off ^{each 49.}
Sible be guilty and this is the only do-
mestic relation which wife excuse the
receiver.

There must also be a "Carrying away"
Not this is settled. ^{that the law is}

March 140 removal from the place where they are,
28th M^r found is a Carrying away.

March 108 So pulling on Earings, out of a Ladies
Sack 289 car which she had caught in her hand
Do 297 was decided to be a Carrying away, & he
pulling, 31.

But it has been decided that taking
a Box of Goods off upon one end was not
a taking, because it was not removed from
the place.

The taking must be a felonious one
or "animis fletiandi." A felonious intent
is attached to Larceny.

It is plain therefore that a Person
destitute of understanding can Commit
Larceny. When it is ~~not~~ felonious it is
a bare Theft, and may be accompanied
with a breach of the peace.

Whether the intent is felonious or
not must always be determined by the
Circumstances of the Case.

March 5th
43 & 432 So if a Slave should take his Master's
House without leave and return him
again he would not be guilty of Larceny.

The taking and Carrying away of money

is usually evidence of a felonious intent -

It will not always be conclusive & the
fact may be rebutted - . . .

Hence it may, be argued that if
a person takes the personal Goods of an
other without his Consent & he has with Reason
procured a felonious intent - and this Do. 203.
Præsumption must be rebutted - as -
"Every fact" - evidence is always Conclu-
sive unless it is rebutted. /

The next Clause of the Definition
relates to the Subject of Larceny. "And"
"the Person's Goods of another." D

Things Real or those which possess
of the reality, are make Subjects of Larceny.

H. Baile 144

Hence the produce of Land when Hale 509,
paying, is made without a good definition. Do. 512

This does not speak of land, and is not Went 187
personal property, i.e., till it is so. Search 208
and, and supposed to remain in the pos. 480. 232
session of the owner. So that if
they are strown and carried away by one
continues act the produce has become be-
come the personal Goods of the owner

Con-

Consequently it is not the Subject of Larceny,

Bust if things of this kind, as Faith
Hawk 141 Grass. Grain, &c &c. are stoned at one
Hawk 510. time, and at another are carried away,
3 Inst. 109 they are then the Subjects of Larceny.
4 Rob. 233. And it makes no difference whether the
owner or the Thief found them. -

Leach 181 It is now settled however, that the
McNally King, ^{is} stolen from a Sleety Coach or Milk
593 ^{from} a Cow, it Larceny.

The reason given why things sta-
Rob. 440 rining of the earth, are not Subjects
Hawk 142 of Larceny, is that they are not so easily
4 Rob. 232 removed as personal property. Therefore
there is less danger of their being stolen.

By, Corn Law. Charter of Land are
Hawk 50 made Subjects of Larceny. Because it is
Do. 510 said they relate to the realty. - Bust
Inst. 1137. This is truly a singular notion; for if
Leach. 13. they are taken there will be no rea-
on to steal.

Bust Consider the reason why
Deeds of Land are made Subjects of Larceny,
to be the same as that by Chancery action.

in Actions are not "by" the Gods taken
and placed some Unjustly valued
Gods Chased in Actions have no
estimated value in Law

8. Col. 33.
2. Bac. 470
1. Hawk 442.
Contd
1. Hale 667

These things however are made
Subjects of Property by King George 2nd

In Conn^t we have a similar H^c 248
grafted a few years since

Nothing can be a Subject of Property
unless some Person has a Property
in it. There can be no Property unless
there is a Civil wrong because the God
requires that it be the Property of another

H. Col. 303.
1. Hale 51.

Hence all Animals, Fish, &c^t 1. Hawk 143,
are not Subjects of Property, as no Person
can be said to have any Property in
them.

But animals which were once
incapable & now become Subjects of
Property if they are taken and confined,
are free of estimating value

2. H. 303.
1. B. 235.

But generally wild animals are of
estimated value only when they serve
for food. Hence when they will not
serve for food they are not Considered val-
uable & in general not the Subjects of Property

*The wild animals are relieved from
their original wildness, & if they are not
used as food, they are not the Subjects of
Society.*

*2384, 395, Bulk a Civil action of Treason.
420 236, will lie for the taking and Conveying
of these animals.*

*2385, 470, it tame Hawk is an exception to
1394, the rule for they are Considered valuable.
3 Inst^s 109, at Common Law.*

*Bulk a his rule as to valuable ani-
mals is confined to wild ones, for tame
1394 animals tho' they don't deserve food are
420 236 still Considered as subjects of Society, as
1394 Hale 511, Horses, cattle &c. - 'a forlorn,' those
domestic animals which do not fit
for food are Subjects of Society.*

*There are some domestic animals
which are not Considered as valuable
and are not Subjects of Society, espe-
cially Dogs and Cats let them be animals of
Society vice lies, for taking them.*

*All personal Goods are Subjects
of Society of C. It is clear that Money
is so. But upon the Construction of
the*

one Englishe of Chal. which takes away
Benefit of Chapp from those who have
Good wares and merchandize in Chal. Exodus 48,
Deut 50
Exodus 23:4
Exodus 40:3
It can be deduced that when it is in the Sute-
jent of Lancum, the Colony is within the
Benefit of Chapp;

" Of another " Good of which
no one is the owner, at the time of taking
can be the Subjects of Lancum for God
the property is " in nullius "

No treasure dead, waste & Extrayst 17 Gall 512
18 & 295
as to this property are received to before
a steale & wasted. Before they are found
for the King.

But tho' the Goods must belong
to some one yet it is said that the Duke Dyer 99.
or need not be knowne, and an indictment P. 144
may be brought for stealing the Goods of
a person unknowne.

But it is said by Dr. Spal Sh. 2. Gall 290
S. 400. 349
4th & 352
P. 145
2nd & 3rd
- 580 -
unless upon Trial or proved, that the
property is in some one it shall be
presumed to be in the prisone. —
This is in my opinion a very impudent Q.

The Goods in a Church are of subjects.

of Dancy for a day, & may rot the Church
in Chichester. or Consecrate it.
18 March 1455.

If he lay on a dead body, it
will affect him.

The stealing of a dead body is not
25 March 1455 Dancy but it's a high treason at
Court.

What if a man steals his own goods
and Dancy on his own goods in Exeter
Cathedral.

Chas
20 April 1455
3 Inst 1455 from a Bailee or from a Sausage with
18 March 1455 a man to subject him. He is guilty of
Dancy. If he has these subjects before
no more than 14 days after he is guilty of all
the goods he committed. for his offence the man is
guilty of a great fraud only.

If the goods of one man are baited
to another. and a stealer steals them.
18 March 1455 from the Bailee he is guilty of Dancy.
Stealing 1455 and may be indicted for stealing from
the Bailee who has a speciality in
them at no other person except the true
owner.

These have been done question and
answ.

in the Books whether one indicted for
Larceny and who has a Special Indictment
found ag^t him as guilty of Treasons.
Can have Judgment rendered ag^t him for Treason, &c
the Treasons. — This is now settled in
the negative, — and the reason is that all
make different Species of the same Genus
out of different Genus.

Punishment of Simple Larceny.

No Simple Larceny at C^t is Felony,

Grand Larceny at C^t Law, is a Capital^{4 Bl. 5. 95}
Felony — Petit Larceny is not — D^r 237.

At C^t Law. Grand Larceny is within 2 Hact. 489.
the Conc^t of Clergy. Out of it taken away
by the Stat. in Larceny Cases.

As to the punishments of Petit Larceny
two eminent writers differ.

Hawkins' says that is a forfeiture^{1 Hawk 140}
of all Goods and Chattals. Consider whipping
to be.

Blackstone says that there is no 4 Bl. 5. 95
forfeiture — One of his reasons that Law D^r 97. 237.
is not is Correct. — of Grand Larceny

In the former author his Bl. R seems to allow the
whipping. But denies it in the latter.

Mixed Larceny

This has all
the properties of Simple Larceny. But
it is also accompanied with the aggravations
of taking from one's own House
or Possession.

4 Bl & C 239 It is Larceny from the House all
Done 241. That can be said is that it is more Ag.
1 Hawk 151 It is not distinguished in its
Done 198. & treated. It is not distinguished in its
nature from Simple Larceny.

It is said that when this offence is
committed by breaking the House it is then
Burglary. But I conceive that to be in-
correct, for they are separate offences tho'
they are included in the same indictment.

Larceny from the House is rated
at the value of Clergy in several of the
States, that at C & H is a Capital Offense.

Hecking, 31. And this is the only difference be-
tween Simple and Mixed Larceny, as
Beach 310. to this you will see, for Simple Larceny
is in almost every Case without the break
of Clergy.

In Common Larceny from the House.

is not distinguished from Simple Larceny.

The second Kind of Mixed Larceny, is from the Person, and this may be committed either by stealing privately from one's Person, or openly and with a Assault. - The former is called Pick et Pocket, and the latter Robbery.

1st Pocket-Picking.

The offence of privately stealing from the person of another is a Felony at C^t. and there are two grades in it, as in Simple Larceny, 1st Grade 52^s as to the value of the property stolen, &c. or 2^d Grade 33^s if it is over the value of 40^d pence, it is felony, if under it is Capita^d, if under 40^d pence it is Malitia, if over 5^s it is Capita^d. The Wages of a Clergy is taken away from the former by Statute.

Robbery.

Open and violent theft from another is called Robbery, and this is essentially distinct from Simple Larceny.

Robbery is the felonious and forcible taking from the person of another, of Goods of any value, by violence or putting,

them in force. - The value is immaterial
w^t Ro 232 the punishment is the same whether the
value is great or small. -

To constitute this Offence there must
be a taking from the person of another.

1^o In the first place there must be
R^t Hawk 147 an actual taking. - an attempt to
R^t Hawk 532 make it with robbery at C.S. tho' it is a
high misdemeanor.

By Stat^d of George 3^r. an attempt
R^t Hawk 2^d to do it is made w^t Colony w^t Capital &
R^t Hawk 251 such punishment by transportation for 7
years.

2^o The taking without less from the
R^t Hawk 148 R^t 212. But this is not manifested
R^t Hawk 533 in manner to offend of the man. for if
R^t Hawk 1018 every one takes Goods in the presence of
Gathew 145 the owner. if with violence or by occu-
pying force it is a taking, without Definition.

So also if one who has instrumental-
ity of force takes Goods from his Servant
R^t Hawk 148. It may be argued. it is a taking from the
Master. without the Definition. for the
possession of the Servant is the possession of
the Master.

It is said there must be afforceable
taking, yet it is not necessary that
extreme violence should be used in
the taking. - all that is meant is that
the Goods be obtained under the influ-
ence of fear or terror by extortion.
Compulsion to be.

And upon this point unless it has
been decided, what if one by means of 3 Inst^s 58,
threatens another an oath from another Hawk 147.
that he shall go and bring him
Goods and he does so and delivers them it
is a taking within the Definition.

But a taking which is made direct
by from the person of the owner or in his
presence is not within the Definition - Com^s Rep 478
Sug^c 1015.
So if a person apprehends of being
robbed throws down his Goods and runs
and they are taken this taking is not
within the Definition. L)

It is laid down as a rule in most
of the Books, that if several persons join 1 Hale 533
to rob A and one of them robs all Do - 537
from the rest and robs B, unknown ^{willfully} 590.
to the rest, all are guilty of the robbery
of B, because of the intent to rob -

I hardly think the Cash will ever
be laid. It appears to me that the cash
cannot be guilty of robbing B. for the
one who has done it has left the bank
of A and the other don't know of the
robbing of B.

The offence of robbing is consummated
3dust^s 60^o and from the act of detaining. From that
Do 69^o moment he is a robber and even if the
Cash 2^{1/2} d should immediately redeliver the gold
to the bank he would still be a robber
374.

This taking must be by violence or
putting in fear. It would seem that
both were necessary. One of them is
sufficient. By violence is meant
Rob^s 148^r actual violence; detaining force. Com-
Do 494^r mitted on the person. — This violence
Hecting 69^r or putting in fear is the grand distinction
or which distinguishes robbery from every
other species of larceny.

The word "violence" then implies some
Hector 128 being more than the mere act of taking
Cash 203^r It must also be such as is calculated to
Rob^s 148^r move the heart, if not the cash be robbed.

But the violence or 'pulling' in fear
must be previous to or simultaneous
with the taking for if it is subsequent 17 Hall 134.
it is no Robbery. The reason of this is. 17 Hawk 148ⁿ
that the violence or pulling sufficed
must be the means of ^{note} consummating
the robbery or taking.

Further - The violence or pulling in 17 Hawk 148ⁿ
case must be professedly for the ^{note} sake
of obtaining the property of another 2. 17 Hawk
397.

It has been held on that when a man ^{see} 260.
was put Hand Cuff'd on his Person for 20d. Rent,
the violence of extracting his Money in 597
was Robbery.

To take pulling in fear it is a
settled rule that such menaces or threatening
gestures as may reasonable expect ^{see} 260.
fear for an apprehension of damage in a just ^{see} 260.
way in fear without the apprehension 17 Hawk 149.

But a fear altogether groundless not
a pulling in fear without the apprehension
So also when there is a sufficient
suspicion of doing it.

Again such threatening as is likely

Section 129. in Common espoused to execute on af
Greek 199 & because of danger to one's & associate, or
do in ~~good~~^{bad} good name, is & fear without the definition.
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For the purpose of exciting fear.
There is no necessity of actual violence or -
Section 204 threatening. For it may be done by signs
Hawke 194 as by presenting a weapon. - In
436^s 243. So if a man should compel another
to sell him property at a mere nominal
value. It is Robbery.

Whether Compelling a man to sell
Hawke 149. his property at false value is Robbery or
438^s 243. not well settled. Hawke thinks
it would not be Robbery; but a high mis-
nomer.

So if a person with a sword, drawn
446^s 244 begs alms and give it him who mistrusts
1 Hawke 90. and apprehension of violence. It is a felo-
nious Robbery;

There is a rule laid down
in "Hawke," that taking property under
Hawke 43. by a robbery, without a color of right
is Robbery. But I should rather think
it to be Simped Larceny.

When the offence is laid to have been committed by putting in fear it is not necessary to prove apprehended actual fear for such an ^{reach 1254-1} ^{letter 1287} ^{March 149} circumstance of violence as are calculated to excite fear ^{as of thief}

whether he clearly taking the Goods of another
or without violence or threatening it can be
larceny of any kind or such or with larceny
settled. - According to Hawkins' (the) ¹⁷⁵
cannot be larceny of any kind - it's where
it meets to be and comes up behind him.
Snatches his Hat from off his Head and
runs away with it. - Now this cannot
be without the definition of larceny of any
kind. - It has to think that this may be
come within the definition of Simple
Larceny. "I found" ^{Hawkins 150}
^{Do - 149}
^{do}

It has been decided that an application
for a license for a tollbooth on the highway is not to be submitted until
requested by the State of New York in at D. Williams, Agent, on 599 and

Robt Gray at C. L. is a Capital & Valuing Stock
was a Clergy-able one. But it is now worth \$6,000 15th Augt 1849
Clergy by that time so of course have before the fact
48 Pounds £48

Forgery.

48 Stat. 247. Forgery or as it is known at Common Law
is making of a writing "Cuiuslibet falso," i.e.,
the making or altering any writing so as to
represent it as another's writing. D

1 Stat. 61. Formerly there was a great number
of writings made subjects of forgery, as
1 Hawk. 210. Bills, Checks & Exchange, Stock & Cuse
Do. 335.

1 Stat. 737. But it is now settled that any writing
2 Stat. 1451 being by which another's right may be lost
Stat. 747. if so done, is a subject of forgery at Common Law.

It has also been determined that the fraud
3 Stat. 1061. in the making of a Bill of Exchange in one's own
name, p. 40. stamped paper, is forgery, for every man may
2 Stat. 480. not know what the fact is on this subject, and
3 Stat. 7901. may therefore be liable to accept one.

4 Stat. 247. But now by a variety of English Stat.
1 Hawk. 330, almost every species of writing is made a
subject of forgery, and except of the class of Bills of Exchange.

3 Stat. 184. Our Statute in Conn. includes all
private writings in gen.

Thus far as to the subjects of forgery.
The offence consists in the fraudulent pur-
posing or altering the same.

N.B.

Now very little need be said as to the making and altering of writings. The words themselves are a sufficient explanation. As to this part of the definition see Hawk³³⁰

If one employed to write a Will should insert a false Legacy. See is guilty of Forgery. Hawk³³⁰ B.Bac.² § 67 It must however be remembered that the Testator signs the Will. Nov. 161 Dyer. 288

If one should write a release or Oliga Hawk³³⁰ over another's name which he should. B.Bac.² § 67. See is guilty of Forgery.

Grandly subscribing another man's name to an instrument already drawn is. See of Forgery. In Day if one makes a mark with a grand intent it is a Forgery.

It is not necessary to constitute Forgery that the writing be such as would be effective, if ~~be~~ were genuine. So if one D^r — 891. Should make a will for another See is guilty 483 D^r of Forgery; before the Testator dies at which time the Will is to take effect.

If one inserts in an Indictment the name Hawk¹³⁰ of a person whom the Grand Jury did not find guilty or if in an Indictment of a number D.Mad² 68)

method, 493. if you was the name of an innocent man
is inserted it is forgery.

It is a gen^r rule that the fraudulent
16 Hawk 336) altering of a writing in a material part
16 Dec 3507 is forgery; or in other words a fraudulent
16 Nov 619. alteration in a material part is an alter-
ation within the Definition.

But this distinction is not well taken
in the Books. Between an alteration in a part
material, and that of a part immaterial
16 Hawk 336.) His said one way be guilty of forgery in me-
16 Dec 3500, king and attorney, or executing a Deed he said -
Nov. 101 own name. It is if after having deed-
Cited 16 Dec 3500 d. a piece of Land to B. should afterward
16 Dec 3507 d. the same piece to C.

If one after having found a Bill of Ex-
28 May 146, change forged an Indorsement in order to get
16 Hawk 210 it discounted he is guilty of forgery; and it is
Note sufficient if he merely writes the name of the
payee upon it.

Tho. the fraudulent-making
is a forgery, yet if one writes an instrument
16 Hawk 337. in another name and signs and seals it in
16 Dec 339 the latter's presence and by his consent and di-
rection he is not guilty of forgery. And I pre-
sume if it were done in his absence it would
not be forgery if done by his direction.

The making and altering of a will
must be fraudulent in order to constitute
Forgery. ¹⁷ There are many cases
which from their nature are not Forgery.—
As if the Obliged of a Bond should add £.
Pounds into Shillings, it would not be Forgery. ¹⁷ Nov. 97.
So also if the Portion of a Note should be
the same. It is said in "Hawkins" that this. Prob. 44
is a misdemeanor. But I don't see upon
what Principle, unless it is upon a Principle
of Policy.

But tho' the alteration in the above 11 Coke 26
Case would not be Forgery. Still the Bond or. Est. Dug 1784
will be avoided. ¹⁷

How far an insulating alteration is
considered as Forgery. I shall not at present
take notice. .

However, a mere Non-observance
cannot equitably amount to Forgery, tho' the
intend be fraudulent. So if a Person should
only be inscribe a Legacy in a Will it would
not be Forgery. ¹⁷ As a consequence. Nov. 101.
making and altering must be a positive act, Hawk. 837,

But, if a Person employed to make a Moore 700.
Will, was directed to limit an Estate to B. af-
ter the determination of a particular Estate
for Life, and he should not make the particular
Estate but should give it to B. to commence.

"instalments," it would be a Forger. —

It appears to me that in the foregoing example the writing was a ~~forgeries~~^{forger's} of another who the Law deems it to be ~~an~~ ~~or~~ ~~in~~ ~~itself~~.

This fraud upon making and attesting it, required to be to the ~~forgeries~~^{forger's} of another Reg'd. Each 185^o But by this is not meant that an injury should actually be done. It is sufficient if the Reg'd. 784^o 28^o Ray, 1401^o D^o 1406^o act tends to the ~~forgeries~~^{forger's} of another. Thus 18^o Ray 737^o if A forges a Note ag't B. It is not necessary D^o 739^o that the Note be back is back to make the ~~forgeries~~^{forger's} Forger; the Forger is corrupted when the Instrument is written.

But a ~~fraud upon~~^{fraud upon} it is necessary to constitute this offence. Yet it is sufficient to aver the intent generally without pointing out the particular mode by which the particular fraud was to take effect.

28^o Ray 1401^o 28^o Ray 1409^o It is make necessary that forged Instruments should be published for that any claim should 747^o be made on them, in order to support a prosecution.

It has formerly been a question Each 83^o whether the forging an Instrument in the name D^o 182^o of a fictitious Person was Forging or not? 21^o Ray 1407^o It is now settled that it is.

The rules of Pleading require that in the Indictment the forged Instrument be set out in words and figures precisely as it was originally Coupled & by written. And let a Gen. rule shew the Reach 140 least variance between the original & forged. Reg. 231. Instrument, and the recital of it is fatal. - P. 787.
 This rule however is not literally true Salt. 680. for where there was a mistake in the spelling of a word which did not alter the meaning. Reach 787. it was not fatal. P. 140

When the Indictment describes the Instrument as purporting to be an instrument 180 of such a description, the Indictment will reach 209. not be supported unless when produced it Reg. 287. does prove to be such an one on the face of it P. 300.

The Corn Law Fences are not a Felony and is punished by fine and imprisonment But by Stat. it is punished in almost every case with Death, and it is rarely over the 4th Br. 247. case that one convicted of this offence is pardoned.

In Corn the offend is punished in the same manner as that of Burglary and off Conn. 184. the injured party has double damages. The offender is also rendered incapable of being a witness or a juror. -

Under our Stat^e in Conn^t the making of
any writing is not Forgery, unless it is done
to prevent Justice and Equity. This however
does not differ materially from the Com Law
definition. The word "altering" is not
used in our Stat^e. However the word "making"
includes it, for Supreme int^r of strictness of
Language. The altering is a making.

Our Stat^e also prohibits and punishes as
Forgery, the uttering and publishing a forged
Instrument, purporting it to be Nat^t.

Perjury.

"Perjury is defined to be "a crime committed
when a lawfull oath is administered and
sworn, by some judicial proceeding, to a person who
swears wilfully, absolutely, and falsely, in a
material matter, to the point in question."

The false swearing there must be "wilful"
R. Hawk^t 318 i.e. intentional, and with some degree of
Salk^t 573 deliberation; the word "wilful" here seems to have
the same meaning as the word "intentional".

This swearing must be in some of a
R. Hawk^t 318, judicial proceeding, i.e. the false testimony must
C. C. Cha^t 168 be given in a court before

Some Officer authorized to administer it; and ~~Secy.~~^{W. B.} in some proceedings relating to a ~~sue~~ or prosecution. 12 Octo 101

The 1st question is whether the O.P. be a P.O. of record or not in which case
false testimony is given.

The Court all one and one of record.

The oaths must be taken "in some judicial proceeding." No oaths taken in any judicial proceeding, are valid. *Perry v. State*, 46 Ga. 137.

But it is not essential that the offence
be committed in a ~~CD~~ during time, for it
is well that ~~Prayer~~ may be committed in ^{75 Rep 315}
an affidavit or Declaration tho' they are
never used in C^t, for they are relative to the
Proceedings, &c.

Agreeably to the 3d Stat^s 160
to such public oaths as deny or affirm some truth 320,
in matter of fact: this was Prohibited by Rom 3 Par. 814
deny truths, or truths of fact. Doubtless.

Beth Duying is predicated upon any
false oath, that Plaintiff could speak in question 17 March 320,
tho' the point may not immediately affect Croches 140,
till the judgments o' the final judgment

I have already obtained that the violation
of our ^{new} & ^{binding} treaty is not Peiping. So-
D

So a Juror who does not find in a true
Statement, Judgment or Verdict is not guilty of Perjury

17 Nov 30. But a Party is at fault when allowed
2 Mo. Nally 470, to take an oath may be guilty of Perjury at
Crol Chas 1609, well as any other man who is Unconscious
De Quincey 462,

In Court Work the Staff and Officer are allowed
to swear to a Book Debt or to an Account, and
here they may be guilty of Perjury, if either
swears falsely.

If a Witness having testified what
17 Oct 24 1807 is false conceals himself. He is not guilty of
De Quincey 516, Perjury, over who he intended to testify, Falsely and
2 Mo. Nally this Rule is extended to a Supplemental Answer
474 & in O. P. to the Q. B. D. - doubtless, D.

Palmer 394. It is said not to be at all material
3 Mod. 2432 whether the fact sworn to be true or false
17 Nov 322 provided the Witness does not know it to be true.
6 Rep. 637, for he is to answer to what is within his knowledge
lego.

This is over-ruled in the Definition
which seems now to be used tho. not so
formerly. I mean the word "absolutely." 17 Nov
17 Nov 323 it is not sufficient that a man may not testify,
3 Bar 815, absolutely to be guilty of Perjury for if he
3 Inst 100, Swear to a fact according to his knowledge
for Rutherford's collection or if he believes it to be so, he is in
Duch 801, no way bound to do so. He should testify falsely tho
17 Nov 323 such be his pleasure, he should testify falsely tho
it is.

He is guilty of Pejny. So the word "absolutely" 2d Ch 885
in my Printed opinion "says the modest Mr. Gould" is now useless. Cowper 229.

The Swearing must also be material to the question. And, it must be so material 1800. 2d Ch 870
that point. If then a witness testifies to 2d Ch 258
a fact altogether impertinent to the point 1st Ch 53.
as issued. He is not guilty of Pejny in a Cr. Ch 22
legal point of view. However Criminal he Cr. Ch 500.
may be "in fuso Conscientia" for it does 1st Ch 223.
not tend to prevent the administration of justice.

But still if the false testimony 1st Ch 101
circumstances and not directly applying Cr. Ch 212
to the facts in issue tends to aggravate the 3d Ch 2815.
extenuate the damages. it is Pejny. 1st Ch 223.
Or if such testimony was given in favor of the party
and of intent the injury to follow what
he afterwards did. -

If the false testimony in a point in 1st Ch 224
material in itself tends to make the jury Cr. Ch 258
more readily believe any material 2d Ch 882
it is Pejny.

But there are many cases
where especially in case of torts which are
not material and upon which Pejny is
not

17 Hawk 3rd it will be deducable to a witness testifit that
 Penn Dis 14th one Stock of a capod was used in a Ballon
 No 8th when in fact he knew another sort of a capod
 was used it is not Proving. But I conceive
 if testimony of this kind tends to exonerate or
 aggravate damages it would be Proving.

17 Hawk 3rd But it is not sufficient to show in what
 Note 30th degree the evidence was introduced the Prison
 or is not bound to prove it.

It necessary that the record be produced
 to show the official proceedings and the
 rule Valley ~~Stock~~ is sufficient for this purpose.
 4080 63rd It is with respect that judgment should
 be rendered. If so the record may be produced
 tho in ordinary Cases it must be render-
 ed before the record can be produced as the
 evidence of any thing.

17 Hawk 3rd The Court in which the Prison is con-
 sidered guilty with respect; jointly with the Testi-
 mony and also what he testified.

It will be necessary to consider this offence
 2 Decr 21st that the false evidence should have been used
 3rd Dec 23rd by the law or Justice; consequently its is
 3rd Dec 8th not necessary that any Person should have
 been actually injured by it.

It has been decided in England that the word "wilfully" is not absolutely necessary. Each of us
to be inserted in the Indictment. The words
"falsely" and "maliciously" are sufficient.

God the purpose of Convicting one of 10 M^o. 195
Perjury. It is a Rule of Law that there must be 1 M^o. 1837
at least two W^mpples. otherwise there is 2 D^o 635.
wanted only two facts against each.

It is now well settled that Circumstan-
tial evidence to the fact that the Defendant willfully
has sworn to. can't be admitted; this must be 471.
Proceed by direct testimony.

The Evidence to the fact of Perjury, is also
that is required to be direct. Aug. 623.
Perjury can't be committed by two persons. D^o 870,
jubilately therefore there can't be two persons D^o 921
joined in the Indictment. Cooper 494

But two persons may be guilty of Sub-
ornation of Perjury, and both may be joined D^o 886,
in the same Indictment.

Subornation of Perjury, is the offence
of procuring another person to commit Perjury. Hought 925.
but in this case Perjury must be actually committed 187
committed, for an insidious attempt D^o 400. 122
does not amount to Subornation of Perjury.
but is only a Misdemeanor.

L

Robt 138) Polygamy and Subversion of Polygamy are
in England punished with fine and imprisonment
and legal infamy. Legal Infamy
33 Chas 303. is a consequence of Polygamy & Condamnation

Cowper 229 When the Polygamy is laid upon any affi-
Drap 257. davit or Deposition, the least variance be-
Salte 600. tween the initial and the original Deposition
or affidavit will destroy the indictment.

Under the Statute in Conn. the Polygamy
must be committed in some City or Town.

According to the Statute of Conn. the false
affirmation of a Quaker is Polygamy, and
punished as such. And if he marries by
McConn 182. Polygamy procures another wife to be taken.
He shall according to our Statute lose his own
And this Statute makes the offence
Murder, whether the Death of the Party be
procured or not!!!

Criminal Code of Conn.

I will now consider the Criminal Jurisdiction
of the City of Conn.

The highest Court of ordinary
jurisdiction in the State is the Superior
Court. The Supr^r Ct has jurisdiction over
all crimes which are punished with Death

loss of Life, Banishment, and the Punish-
ment of Adultery, and Confinement in Newgate. St. Conr. 30.
Gate. This Ct^t has the exclusive jurisdiction over all the above except Confinement in Newgate, and has the Ct^t of Common Pleas has concurrent jurisdiction as in the case of House-stealing.

In Cases of Riot the Sup^r Ct^t
and County Ct^t have concurrent jurisdiction. St. Conr. 30.
and that of House-stealing and the only cases
wherein the jurisdiction of the two Cts is con-
current.

The Sup^r Ct^t has jurisdiction over
all High Crimes and Misdemeanors, but the County
Ct^t has still cognizance of some Crimes and mis-
demeanors.

The Sup^r Ct^t has determined that
they have exclusively the cognizance of those
Crimes and misdemeanors which consists in an
unsuccessfull attempt to commit some High
Crime or Offense, as an unsuccessfull attempt to commit a Rape. St. Conr. 183
Swift. 95)

The St. Q. has also excul-
pated jurisdiction over the higher Offenses ag^t
Religion, as Blasphemy,

Court & Common Pleas

Our Stat^t provides that the C^t & P^t shall have Cognizance of all those Crimes which are in St^t Con^t 129 specified, to stand without the Jurisdiction of the S^t C^t, and of such other as are committed within the Jurisdiction of a Single Magistrate of the Law.

There is no Appeal in Criminal Cases, either by ^t H^t Con^t 269 from the Ct. of Common Pleas, to the Sup^r Court

Single Magistrates of the Law, as Justices of the Peace, and Affidavits, have Cognizance of all Crimes the original and Excluded from the Jurisdiction of which does not ex- St^t Con^t 142 ceed the Summ^t of 7 Dollars, except in the Case of Theft over the value of 10 Dollars.

The Summ^t must be limited for if it is Excessive they have no Jurisdiction.

Whipping is the only corporal Punish- St^t Con^t 413 ment which a Single Magistrate can inflict.

Our Stat^t provides that all Justices of the Peace shall have Cognizance of all Breaches St^t Con^t 336, of the peace unless aggravated by some High handed or notorious violence in which case they are to bind the accused over.

Single Magistrates of the Law are at St^t Con^t 142 of Enquiry in all Cases above their own jurisdiction.

An appeal lies in favour of the prisoner ^{St. Coms 142}
in all Criminal Cases, except those expressly ^{D. 197, 285}
Prohibited by the Stat. to the Ct. of Corw, Peace. ^{D. - 370.}

In Criminal Cases the jurisdiction of a
Justice of the Peace extends through the County. ^{2 Root 357.}
Sees in Civil Cases, when to his own Town or
^D

Offences which are local are trialed in ^{Firstly 401}
the County in which they are committed. - ^{Keeling 78}
^D ^{Douglas 760.}

Of Bail in Criminal Cases.

When one is arrested for a Criminal Offense
he is to be bailed before a magistrate, and if
he has no jurisdiction of the crime. he is to ^{4 Blom 296.}
examine him, as to the fact charged, and see
whether he should be bailed or not.

The magistrate can not in such cases ^{4 Blom 287}
examine the prisoner as to the fact of his guilt ^{D. - 296.}
tho. in England this is authorized by Statute. ^D

If upon the examination, saying it appears
that the offendee has been ^{4 Blom 295}
arrested, or that the charge against the Prisoner
is groundless. The magistrate is bound to do it. ^{4 Blom 295}
charge him. But where there is a slight pre-
sumptive evidence against him. the magistrate
is bound to commit him for trial or admit
him.

Sent to jail, if the Offense is Capital.

Bailing is delivering the Prisoner over to Justice and giving good Security that he shall appear at O^r Trial and S^t Trial. The Bail are Considered Sureties.

^{48 Com 277.} In those Offenses which are not Capital
^{28 Hale 127.} the Magistrate is bound to Commit the Prisoner ^{Do 277.} over to remain till the Sitting of the next
^{18 Barb & Bay Court.} 1st or 2^d of August. As a General rule all Offenses go
^{220.} to the Colony are Capital except by
^{48 Com 298.} Statute - As to what was the
 surely Considered as Capital see the last Author.

By Stat. Bail is denied in the Offense of
 Treason and in many Felonies. It is a Gen.
^{48 Com 298.} rule that Bail is taken away from all Felo-
 nies when the Parties Confess it or are no-
 toriously guilty.

^{Cawper 333.} The Ct of H^c B^d and in the
^{48 Com 2179.} Vacation, any one of the Judges has power to
^{2 Hawk 175.} admit any Person to Bail for any Offense
^{Salter 105.} See 49.543, similar Cases of necessity.

^{Aug 5. 911.} ^{2 Hawk 1242.} But the Ct does not admit to Bail in
^{Death, 122.} Cases which are not Capital ones in some few
^{Cawper 333.} Cases of necessity.

^{2 Hawk 157.} ^{2 Hawk 175.} But it has been decided and settled in Eng-
 land that after a Conviction of the Prisoner by
^{medit.}

by which he can't be admitted to Bail unless
the Prosecutor gives his Consent.

It is a Gen^r rule that he who has the final
Consignation of the Offense may admit to Bail.
That is to the contrary notwithstanding.

The Ct^r of C.B. however, never do thus admit to Bail, 420
Bail to the contrary to that unless there are some - Dc - 425
circumstances rendering it necessary.

In Conn^r I think our S^t Ct^r used to
vacation any one of the judges may admit
to Bail, even in Capital Offenses notwithstanding
the Stat^r. But I presume they would be gov-
erned by the same rules as the Ct^r of C.B. have
adopted.

The ministerial Officer who makes
the arrest can't take Bail in Criminal Cases
unless he has judicial power to do it.

In England the Sheriff is a Gaoling Officer
he has judicial power.

Bail in Conn^r the

Sheriff has no such power, and Bank 70^o
dict^s Bail. In Conn^r Bail is to be
taken by the Magistrate who first examined
the Person, & in Capital Offenses he can't. Conn^r
take Bail - But after the Magistrate has
presented Bail, the Sheriff may take it and
even after the Prisoner is committed, if pre-
viously

privately presented by the magistrate.

The Bail in Cases in Criminal Cases is taken in different Treasuries according to what Characterizes the Offense.

If the Crime is Cognizable by the S.C. then the Bail is taken in the name of the State Treasury. If by the C.C.D. in the name of the County Treasury. And if by a single magistrate in the name of the Town Treasury.

If an Officer takes insufficient Bail and the Prisoner does not appear the Officer is fined at Corn Law.

The Common Practice in England in Cases of Homicide is to require of two Sureties and in Infamous Offenses only two.

In Conn two Sureties are all that are required in any Case Refusing Bail

when by Law it ought to be granted. and granting it when by Law it should be refused. is a Misdemeanor at Corn Law. and Punished by a Fine. and in the former Case the injured Party has his action on the Case to Recover Damages.

It has been decided in our S.C. in a prosecution for forgery, that when the Df^t was out on Bail, after Verdict or Trial, No-
dick could not be found till he was present
and that the recognizance ought to be forfeited. ^{11 Geo. 3. cap. 59}
But when & specially is the punishment which
may be given when he is out on Bail.

Wherever a Person is prosecuted for a
particular offence and is acquitted, but is liable to ³⁰⁰
for being guilty of another offence he is not ³⁵⁵
to be discharged on the acquittal. But then
are to keep him in Custody till another pros-
ecution may be brought against him.

Costs

In England no Costs ^{7 & 8 Geo. 3. cap. 367}
are taxed on either Side in Criminal Cases ^{Cap. 367},
except by an express act of Parliament.
in the Common Law no Costs are recovered by either
party in Criminal Cases. ^D

Under our Law in Conn^t the rule is
the same as to taxing Costs in favour of
the Prisoner. the Plaintiff pays no Costs,
But on the other side the Prisoner are
not only taxed on Conviction, but may be
on Acquittal; for the Plaintiff, if his Df^t
etc.

the Prosecution was occasioned by a unlawful & Blasphemous Conduct of the Prisoner he shall pay the Costs of Prosecution even tho' acquitted - But if this does not appear he shall pay no Costs.

When the Prisoner is unable to pay the Costs they are to be defrayed out of the State Treasury - if remitted by the Gov C.C.P. If the Prisoner is a Debtor the State St Constable may pay the Costs, and afterwards be reimbursed by the Debtor or Part of the Prisoners Pocket.

But when the Prosecution is before a Single Magistrate the Costs are to be paid out of the Town Treasury.

And on the other hand when Costs are recovered from a Person they go into the State Treasury if the Trial was before the Sup. or C.C.P. and into the Town Treasury if before a Single Magistrate. The Law also provides that if the Person is unable to pay he may be bound and Searched till he has earned sufficient to pay the Costs.

But the rule is that the Person when acquitted in some Cases shall pay Costs does not hold when he is acquitted by a Single Magistrate of the Law acting as a Offender.

End of the Bill as delivered by J. Gould Esq.

Of an attachment for Contempt.

This occurs in many instances for something done in the presence of the C^t. The consequence of it is that the offender is committed to Prison.

If committed for want of respect to the C^t - or for refusal to proceed in proceeding to a Charge or so good evidence he is imprisoned by Court until the C^t rises. This authority belongs to all C^ts. So also where a Person is ordered to obey some Process and refuses and is imprisoned by attachment, he continues in Prison until he obeys, and the duration of his imprisonment does not depend on any Session. —

Where there is an award of Substitution, at such time the party refuses to obey, he is liable to attachment. Because no Execution issues on it in England; nor in most of the A.S. who in Court where it's made an order of C^t and the award is returned into C^t. Execution issues on it by Pro vision of Statute.

Mode of Proceeding.

Where there is a complaint of Contempt there is an affidavit made before a Justice. This induces the C^t to interfere. And a rule is made that the Party shew Cause why an attachment should not stand. This Rule is served on the Party by an Officer. If the Party then make a return and swear, he has

has.

has committed such is an end of his to us in self
 Hawk 142 Bulk of the Swear falsely he is guilty of
 150. 84. Perjury. If he refuse to make any return
 Hawk 183 Receipt of Counterfeits issues. Statute of Arts
 &c. 444 by Swearing falsely can avoid the attachment
 D. 346. for the other party Court deny the truth of the
 Mod. 73. return. The state considers a prosecution
 for Perjury. *D. P.*

See the Hawk's Gapping Head.

Of Piracy

Piracy includes every species of depredation or robbery
 by sea or land, that amounts to felony and any
 of the before mentioned cases. It is Piracy to break
 open the cabin at sea, to rob a man on the
 Hawk 152 deck or to steal publicly or privately. All the Cow
 48 Robbery Burglary and Piracy on Land
 Hawk 172 and Piracy at Sea, except that which is done by an
 2 Hobson 431. In view of the ship it is not Piracy but a mere
 offence known as Robbery. It is by the same
 of Piracy known. Piracy must then be done
 committed by persons who are not of his crew or in
 regard to its no matter whether it is done law
 fully or unlawfully, by themselves or by force.

This offence is recognized by the Law of Nations,
 of all Civilized Countries, and the punishment is
 Death. The manner in which it is committed without
 authority, for it is authorized by the Code of Nations, law
 over the members and especially it may be stolen if it is
 not Piracy. It is enough to commit except in
 England the law is said in the Statute of Queen Elizabeth
 without a jury, and so it will in England like the
 Statute of Queen Elizabeth give him a trial by jury as at
 C. L. and so it is ordered to do in U. S. Piracy is often
 committed by English and Americans only in that the
 property is committed at sea, the battle or damage
 Piracy must be committed within the body of a County
 or within one of the other Islands.

Riots, Routs, Unlawful Assemblies Affrayes, and Battalions.

These are all breaches of the Publick Peace. The definition of a Riot seems to include all the former the subject but still we will take up the construction given to the definition.

Riot. The definition of a Riot is somewhat complex. "It must be a disturbance of the peace by three or more persons - assembled together of their own head - with an intent mutually to affest each other, agt. every one who will oppose them in their enterprise; they must have some object in view - and this object or enterprise must be of a private nature; - and it must be actually executed - and it must be executed in such a violent manner as to infuse terror... and then it is immaterial whether the act be lawful or not."

1st) It must be a disturbance of the Peace. Such disorderlyness of the Peace is not a Riot, for **2nd)** It must be committed by three or more

3rd) They must assemble of their own head with

an intent mutually to affest each other, i.e. over persons who will oppose them in their enterprise.

To satisfy this branch of the definition it is not necessary that they should form bands with each other in view, for suppose men are in Town on a general Review day and agree to go and pull down John Doe's house, etc. & has all the other requisites of a Riot, again it has been determined that a man may be guilty of a Riot tho' he never agreed with any man in this design till he is met by a party of felons going to pull down John Doe's house and he joins and affests in pulling it down, he is guilty.

4th) It must be executed an enterprise of a private nature - and it must be actually executed and carried. Of a private nature means as at home private property or his goods etc. If it is agt. the publick or publick property it is so nothing is done as a robbery or treason. If the enterprise is only attempted and they fail to execute it, it is not a Riot, but an offence which it would generally meet

Hawk 273

48 Blom 140

Gillott 43

1 Sath. 595

2 Hawk 294

18 Ed. 2 484

2 Eliz. 2 207

16 Henr. 2 255

Dear

mentioned, - and if they only assemble and don't
attempt to execute it is a Riot and the Offense.

Again it must be done in such a violent
manner as would injure or harm. Suppose
a dozen Strangers, even were to ride thro' this
Town, unarmed, and drift in a savage
like manner. This is not Riot, but is a
lawless attempt. To Commit a Riot there
must not only be an act done, but Violence must
be offered, and seek violence as well as infide. They
Suppose a number assemble for malice of fact
to knock down an old house which is in the way
and is covered with debris. This is not a Riot.
This is may be malice of fact.

It is not material whether the enterprise be
"lawful or not" - man or woman has a right to go
to his own Land and Pastures. Suppose he should
say as determined he shall not exceed this right
and the same on his Land without a
warning, a companion says, see, and he does, but
and that can be proved the companion with others,
breaks into his land. - The Land is open for him
Private rights must often give way to the public
right claims of public speaker and printer. yet a
man has a lawless right to call him, prosperly
if he can do it without violence or a break of
the peace. No man may defend his house by

Riot - Riot is the same offense as an
Assault the intent of a Riot except that it need
not be executed. If executed it is a Riot but an
assumption attempt to Commit a Riot is a
Riot. An Indictment for a Riot will always
conclude with this. If they are indicted
for a Riot and the Jury find they did not execute
the enterprise; they may find them guilty of a Riot
and not guilty of a Riot. After the difference was
stated the Court may conclude with the following:
which has been found guilty of a Riot, but for the
Court they did not do any other acts just given
which is the same way, except that the Offense
described to make it greater or less.

Mr

An unlawful Assembly is the same thing which is presented above of a Riot, or if allowed would be a Riot. So much is said in law as Assembly had no right over the other even so far as it gave necessary to make it a Riot nor Riot, except it should not be executed in the one case nor attempted in the other. And the example before of the meeting in the Town unusually armed suffices verily. It has a tendency to subject men to this unlawful Assembly.

Burke may be an unlawful Riot Assembly when the law was about a Assembly to consult a Riot or Riot at that time. Under this head it has been determined that persons meeting to consult whether they should not do it there after to devise ways and means is an unlawful Assembly. So that what may be an unlawful Assembly. If there is no attempt to do any thing which would not be a Riot or Riot.

Under this head it may be noticed that when several meet together to defend a man in his Domicile from assailants. When there is just reason to fear an attack as from a Molotov if they do not rise in a unanimous fashion and assembled in a peaceable manner it is not an assembly of scoundrels. It must not however be in a manner which would inspire terror. If a man suspecting attack from a Molotov may always appeal to his friends to defend him and they have a right to do the same thing to defend him as he is allowed to do himself.

Any public Officer with warrant has a right to stop Riots Riots be and to call out the "Suff. Comitatus" as often has a warrant and they must obey. This is a power given them from the very 1st of the Case. The blanket Progess of Law would be insufficient. In other cases the officer must act under a warrant. On reading the Riot Act if any the Rioters don't disperse they are subject to greater punishment. So too a private person or persons have a right to make a stop to such a Riot. Even if they can't prove it.

The Compensation for the Riot was fine. except in amount and Peltory. for the other Officer Police and Firemen who have lost their pay or have made that regulating the fines is not a sufficient Law.

4 Blom 140

1 Hawk 297

Hobart 42

1 Gall 544

1 Hawk 309

D. 380

5 Coke 91
1 Mod 110Popham 12.1
2 Blom

4 Dec 1451

Offray Paid down and received the sum of £1000 on
the 1st of May Current for an Affray. It
differs from a Ballow only in this - that it is not so
done in the view of some persons, and a Ballow
may be Served. "Offray" is a French word signifying
"Terror". It is of little importance to make the
distinction between them. It arose in the first
place from the difference in the punishment
for soi melle & felon with intent for an Affray was
one and the punishment for a Ballow only Five. -

Breaches of the Peace

and authorisg the Plaintiff have no past or
other maner. The authorisg to fight or Challenge,
may be so Considered as to be a Clash, the Plaintiff
The Plaintiff might be fine, and the Plaintiff have made
no difference like that in his fight. But it is not every time
that is a Clash of the Plaintiff. If it comes to Claws
it is always a Clash of the Plaintiff, for it is then a bat
then it is not a Clash in any other way, but it is the Plaintiff
considered and if there is a assault to Plaintiff which
is an insult, But in the other case may be called
either a Clash. But for any injury done to Plaintiff
Plaintiff can sue especially on an affray or Battery
the person injured may bring an action. Plaintiff
has never got any money because for his injuries
no forfeiture ever took place. Most damages are
there never to be given to the Plaintiff because
the Plaintiff has been injured. The Plaintiff has his
own action. But there are others which are not
justly punished for such a forward action lies
there Plaintiff is more reason for giving Plaintiff
damages. Eg for Slander which is but a foolish
offense or at least not punishable as such.

Barrabu This is the name given to a small island situated in the
Horn of Africa, about 10 miles off the coast of Somaliland. It is a low, flat island, covered with scrubby vegetation, and has a few small streams. The name is derived from the Arabic word "Barabu", which means "island".

One year eight days old, he, as I understand
facts, was seized a severe attack of diarrhoea, but a second
one never. But both were sudden attacks, & could
not be seen or observed, (the first, as well.) He was
brought home, & supposed to have the disease, and it, with
a fever, has been known he had no diarrhoea, & recovered.

Sufficient Grounds where he knows he ought
not and justly to recover - but he believes the Law
will bear him out, and does not recover. ? This is
not Sufficient upon the opinion of good Counsel when
was in his favour. He is not the Councillor.

There is at C^o a Suit by the individual for 8000
Pounds Damages. This may be lost in all Cases of Negli-
gence, and even if there has been bad advice given
but the Plaintiff is not only Negligent when he has
no ground of Action but who is answerable for conducting
the Suit? It may make observations. As if the demand
is 400, and expenses for £500. - this is Barratry. -

I have known some Cases where the Defendant
must have known it that he had no right of Action
but had to get money. Once the Plaintiff, informed
that the object was to get a Woman sued
for a Charge of a sum of Charities, and, the Defendant
wants to sue her for a Negligent Lawyer - And the
Woman - will it have been his action in order to
recover money and it could not have been her
object to Negligence. Our C^o of Errors however by
the majority decided it was negligent. I never could
agree to his decision.

The Plaintiff went to Barratry, & brought to
him and his wife and his wife the Defendant
to his home Disabilities and Creances false, and
such that he might have to good Ground for his good be-
haviour. Perhaps this would be Case of C^o.

Champlain Held the buying up of other
People's Estates. It was at C^o the buying up of an
Inheritance for a Debtor, with this purpose of getting
married to her, and the C^o ruled that the purpose
of this thing was a fraud against Champlain
But after the Plaintiff had purchased his land the first
one hundred miles is Champlain.

That he was an negotiable instrument can never
be Champlain. For he goes along with which the
Purchase is made, unless the man of distinction
whether its Champlain or not. If a man purchases
at less than what it is worth, but no harm, the pur-
chaser to see the person bound and a Suit at
any Champlain, and such trustees & such were
recently compelled by the Court of Champlain, but don't think
the C^o on this subject will be so strict in making due judge

He does not

Heath 345

There is one species of Cham party i.e the buying
of intended or disputed titles to land. a third is
Hence at C.L. It is where one man is in possession
of Land & claiming by a title and another is out of
possession claiming by a distinct title. The latter
comes from either his title or from another person and
is supposed to make the difference and when
the title actually is out the person buying and such
case can be tried no action for suit Deo & want of
act C.L. and that purchase was punished by a fine
This practice was so mischievous that the King
made a Statute, or else of a treaty, and we find
C.L. had it. By C.L. the punishment was fine
but this cost also a Pecuniary to the amount of
half the value of the land. This is a cumulative
punishment.

On which there has a question if there may
indeed be a title to the land which has the
title on it. In this case the question is in judi-
cition. The question arises in this way. At
some time, he is, and before the time of his death -
died. C. got into possession claiming it by a distinct
title at first he was only at the time of his death and before
was to C.L. At this, recovers good. The ground
that I have is this - a bloddy age is, in a place known
as such, and so now are the lands, in favor of the C.L.
or Bloddy, under the title of disputed titles. Now
as it was past due a title and signed by the
testator and they will not, suppose that the
Land came into his hands if a man of the testator
has other real property. And the Chancellor calls
down that this reckoning was good. First
was decided by our C.L. of Edward, notably on the
ground mentioned. But also on this that the
bloddy age was under a species of obligation to con-
vey.

And mortgages are comprehend by a title
ment on the Writs. So that they are all contained
in Chancery and so that that does not fall them.

Ulster This is sometimes a sum paid by
Public. Mr. Justice said One is where
anybody does not his obligation more than £100
as at the end £90 and takes a Note for £100. This is no
crime and is not punishable by a public prosecution.

The other kind of Ulster is where too much for
the law or for law sake of money that is a crime and
punishable as such. But the kind of Ulster said not
said the Note, that is when a man has a sum of £100 and he is no one
member in it. But if the member is received on a Com
munity agreement the obligation is paid. And if there was
a sum of agreement and not community had the
Note is still valid. But there is no penality. If there
is a general community contract and the sixteen ones
contrainfring this, then we say there is no legal
interest taken. It is questioned whether this is Ulster.
Justice O'Boyle opinion was don't have to pay in
which the old Victoria case where he said such ob
ligation void in such cases.

The penalty for Ulster by the English Statute
is double the value of the sum lent, one half goes
to the party and the other to the creditor.

There is a question whether if a man receives
£2 per cent above and below that is not evidence that
he has another sum received by a contract. But
it may be also that this does not furnish conclusive
evidence that such was the agreement tho' it may
be some evidence.

There is one question which is settled on this sub
ject is suppose a man lends money on a agreement
that he receive in that sum at a certain time. Now when
he gets the sum £100 he says I will be now £100, &
£30 and I don't lend money without a premium. I
ask him a copy off half fact. So it has been his
sum since he has got it. Conclusive though there has
not been any money concerned & he has not yet re
ceived more than legal interest. Well at the end
of the year the creditor says so much shall be paid
that year. he has paid more than legal interest. Well
is there any other sum paid or not. I conceive that
there is not. Then he says the sum has been deposited as
an interest to money. But the obligation is paid,
because there is too much recoverable. London answer
is just £100. Wise

The Statute requires the Prosecution to be commenced within one year. This depends on the time when the Leader received his notice.

Liberi.

There are sometimes public charges, they differ from libel in this, that they must be written, printed or published in some speech. To charge a man verbally with any offence which is not punishable at law, actionable as to charge a man with lying.

2 Winst 463 But if the prosecution make something more than
finds But ask to a Libel it makes but difference whether the thing charged be punishable by action or not, for the private injury a libel is in both cases, they words published with a view to an action will support an action by the injured person. But in the private action the truth of the words is a good defense.

But there are two kinds of Public Officers, by
Liberi. If when a public person is libelled,

But when the Libel is of a private person, And this is sufficiently different. In the latter case when there is a prosecution you can't give the truth of the charge in evidence. The reason of this rule is that the truth has as much tendency to injure the public, (by provoking the resentful,) as if the fact stated were untrue.

But when Public Officers are libelled there is no damage laid upon the public and entailed. Here I suppose the truth of the charge may be given in evidence. Why may not individuals libel them? because it tends to bring the Government into disrepute. Now it has been supposed it is better to allow a suit against the public officer would be easily stopped. But has it ever been held in England or here that nothing can be said about public men in consequence?

If the things are true they are not a Libel, & thus one may say, I am not libeled. But there is manifestly no charge. Consequently he is libeled and the subject of a libel is a libel. With this view of the subject, I suppose if the Statute allowing the truth to be given in evidence were read and used, as I have read the C. & G. said that

The punishment of a Debtor is fine, and imprisonment, and in the case may be Pardon and Sack for good behaviour. If the Charged be often a wife and her husband pay a considerable sum to the Government by the time the Queen is given in evidence.

There are certain Debting without any such Debtor or Government who are in judgment, but the Debtor is taxed itself, and sue Debting as a reward and removal and held out endorsement to the Commissary or other act. But these do not follow must be published. Every man is a publisher that he reads the Debtor, copy it around it in his family it is not a publishing. &c.

Cheating This is a Public Offense and

In certain Circumstances, Cheating w^t false Dishes is a public offense. The Supposition of the Theft is a private matter only. But if a man gett his Supply in the same w^t an appearance to be w^t the Trust, this is a Public Offense. And this is a man carries about him of his own recommendation from gentle men. So to Set by false w^t and measures, the Crime is publishable by his friends and Pardon, with Sack for good behaviour.

Riottery This in England is not known

asked by C^r Berkeley the Queen as to what they call Riot. So of this crime is punished at all he is must be hanged and stoned, for unless it only a man concerned with a woman. But if a man concerned has connection w^t a woman aged woman this is not w^t the Riot. The punishment is that he is stoned by the old Blue Law, a mark is made upon his forehead with the letter R, and wearing a hat over and his neck on the outside of his clothes which always has the effect to drive the Criminal out of the State, as they are then only a liberty to pass the latter R.

Blasphemy is an offence at C^r against his punishment is death, now to Justice there is no record of Blasphemy, which is more than many after the 7th of January, this last and now record it is not beginning of 17th of February.

Foulele Entit and Detainer

This relates to certain upon Land. This made a
Public Office by a very ancient Statute of Eng-
land which has been adopted in almost every place
and which has no laws adopted it is believed
anywhere. Law for the first was before the con-
stitution of our ancestors. It is by the old Law,
was not an offence. The punishment in that
was fine and imprisonment. We have for
Centuries 255, given occasion to use this Law. It may be
saying 273 has since or otherwise as a species of fear, and
Statute 1514 it makes no difference whether the person under
this Statute 194, ever has been or not. Foulele Detainer is where
the person lawfully in possession uses the
legal power by the same mode. If the person in
possession has the power to use any force
to maintain possession. So a man who ab-
sconds property by consent of the owner, and
sheds blood may have a right to detain his
piece. And the person giving it, is liable by force
or damage no advantage from it, for this other
party can do him with particular kind of it,
a. to determine whether there was force used, and
whether was, then, taken up the person, and if
he does not pay, according to the law. This Law is
now used in Wales and in no regard to the
peculiar rights of the people.

treason

A quod sine of the English Law
on this subject are not at all
concerned as a secret communication to the King and
Family, communicating his Council to either the
one, I shall not consider. But there are two
cases of treason under the English Law which are
trialed here. One is to betray a King to the Govern-
ment. Whether the treason is at a particular
place or not, or where and when it was done
originally. But this I suppose had could happen
anywhere. The other is to change the Government
a. Consilient, part of the plot. To raise troops
to change the Government, for treason; and so and
as much as they could agree in treason.
So the treason will be from the God to change
and a man that were present in the change.

there is an attempt to seduce. Grievances may found this is treason. So long as the Govt has done nothing which the people would call treason. But the people may be so educated as to be justified in taking up arms, to support their rights and it then becomes it is not treason. But our districts may get into an extensive quarrel with another, but this would not be treason, if it is said that treason must be of an malicious nature - It must be rendered as to all respects. So you account to full drawn all allying houses, not in England, Opinions was held treason.

Foster 211

A mere Conspirator without being carried into execution tho' a high Treason could not be 11

Another species of treason is treasonable. Hale 132 refers to the enemies of the Land, the King, the Queen, & Friends with any aid or comfort or relief or assistance and Res 48. & now treasonable to the enemy is treason. So it was done Hawk 37 Sept, where the rebellion is crushed and a rebel has fled it was treason or is treason in such a case of course to assist him but it would be otherwise,

It is very difficult to decide in all cases what is treason. For treason to support the supreme power granted who is a subject, & has been long debited not to be treason.

Words never constitute treason (unless libel) concerning the Kings person or family, tho' he has brokha 155 been alienated from his subjects. 11

Foster 198

Hale 118

Hawk 38

No writing constitutes treason unless it has been published 11

Treason is sufficient to cover the crimes in the first required. This said there must be two to be ratified. Now it may need not be two witnesses to the same overt act, One witness to one act and another to another is sufficient.

This said a wife can be a traitress against her husband as treason. But this is not sufficient, as workmen can - there is no case to support the people believed - and upon presumption, & see no reason, for this rule.

Coffeys

Offences against Religion

Apostasy & Heresy are unknown before God therefore
not worth naming.

Blasphemy which givens ~~thee~~ offence agst. The
Laws of Nature & Nature's God is blasphemous & heretical.
This is not committed according to the nature of the
Crime: in the sight of God & Man in the former
opinions are excommunicated and ought so to be.

Blasphemy is a heinous offence and it is
peculiarly a publick offence. This offending the
being of an Omnipotent Providence. Contumacious &
professors of Christ, or profane and scoffers at the
Religion. The principle that givens is that the
mankind of Men, etc. are dishonored, and this ought to
be guarded by all. This definition goes to furnish a
Solemn warning. That which is not so - and this is the
other part of the definition, limited abode with
uttererability as he means opinions.

Witchcraft was a frequent crime both in
England and some parts of this Country late time
and now it was abolished.

Profanation of the Sabbath is another
peculiarities of this day may infringe on the
right of Conscience. The Sabbath I think is no doubt
but that appears now to have no injuries of God's making
an eighth day originally this day to publick works being
that his God is dead divine not est profane. An
Englishman need not that day is good for nothing.
The question is on which it is held, he is required by that

Swearing I can find no particular
is many & various & etc. One that has defined it
is. It must be an oath or swearing by anything
or anything otherwise he is not in fault. The one
thing that is no cause must be taken into account
viz.

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1387

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Mercantile Law

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Lex Mercatoria by
 Hon^d Tapping Reeve.
 March 1813.

Of Bottomry and Respondentia Bonds
Charter Parties, Ship Owners, Seamen, &
 the doctrine relating to Partnerships. Of the
 Law as it respects Pactors, distinguished from
 other Agents.

I shall make some introductory remarks, to
 give some idea on the gen^tl subject of Insurance.

It is the common style in the Books to speak
 of the Law Merchant as the Custom of Merchants.
 That was a language formerly used, in practice it
 was treated as a Custom. It was not, however at all
 of the nature of a custom. A custom belongs to a
 particular place, & it is local, but the L M is not
 confined to any particular place. - it is the gen^tl Law
 of Commercial Nations.

A custom must be proved, and the Judges are not
 bound to take notice of it unless proved. But it is not
 so with the L M, it need not be proved. It is to be proved
 from Authorities, not as facts are proved not by witnesses.

The C L of the County the judges are bound to notice
 so they are bound to notice the Custom of Merchants as
 any other C L, and the presumption is, that it is the Law
 is to govern till the contrary is proved, as by proving a
 custom. The L M is a gen^tl Law but it may have
 customs, and these are like customs at C L. What
 the C L is, to my particular County subject, so particular
 are customs, varying from the gen^tl Law, the L M
 is to the mercantile World. It has many customs in
 different Countries, and is regulated by the rules in each
 Country. And in all Countries the L M may be
 altered by Legislation, & it respects that Country
 where the law and custom are made by the ruling Powers.
 That alter the L M as to that Country. See such
 cases.

Lawes 240,

Cases the Comm Law. of that Country is different from what it is in the rest of the World. There is no proof by an example of the Custom of Merchant only that in some respects differs from C.L. a custom is made and must be proved. The judges must take notice of the Law, which is larger than the C.L. it is to be proved like the C.L. if it is noted, proved by authorities - it is not the subject of proof any more than to prove by the deposition of a man what the Law of the Nation is.

Wherever there is a Law or Customs of the Land in a particular place different from the Gen Law, that must be proved on the gen Law will prevail over the Custom of Lymore, must be proved in suits in Westminster Hall, when a cause made is brought there on a point which was made in Lymore.

I will now mention in what respects the Gen Law differs from the C.L. There are certain points in which the Law differs entirely in its principles from the C.L. and when I speak of the C.L. I mean the C.L. of England and our own so far as it agrees with it.

Now this is a remarkable principle of the C.L. of England and in this Country where it has not been altered that where two persons are joint tenants of property either Real or Personal and one dies the property goes to the surviving tenant. This is called "Joint Tenants". You will observe that it speaks of Joint Tenants and not Tenants in Common with the latter there is no such Law. Either of the joint Tenants might sever the tenancy whether it was of Real or Personal property in his life time, but as long as they had jointly and one dies the property goes to the surviving.

We have no "Joint Tenants" in P.R. We have no Statute on the subject. And as usage can do one of the others they have abolished it as it stands in N.Y. They have gone so far as to say that there shall be no right of survivorship unless the Conveyance expressly mentions that it is to be a joint tenancy. This thing is not known in the Law in any other action. If a man borrows money and one dies there is no law requiring his share after paying the debts of the Company, goes to his family and so in any other case. All C.L. there is no instance where there is not a right of survivorship except as to the stock of a farm, where two persons have been jointly possessed. This is a solitary exception. In other

Another thing in which it differs is this. If
Fraud is viewed by the Law in some respects differ-
ently from what it is at C.L. If C.L. fraud and the
Consideration of a Contract does not avoid it. You
are entitled to your remuneration in damages. - E.G.
Suppose a man is cheated in the Sale of a House when
the Consideration in the Contract is good and you have given
an Note you are liable on it upon Demand - Suppose
into C.L. and impeach it. But on the other hand if
the fraud is in the execution you may impeach if
the Contract is utterly void. This is where a man con-
ters into one Contract when he thinks he is entering
into another. as E.G. in a Contract with a Friend
may be agreed to sign a Note of £500. and you file
it up with £500. and he signs it. This is fraud in
the execution and the Note is, afterwards he signs a
Note for one thing supposing it to be another. -

But if you agreed to give £5000 for a body of West
Lands which were represented as fine land well wa-
tered Land when they fact they were a ridge of Rocks &
Barren hills. you can't avoid the Contract. this is only
fraud in the Consideration - your remedy is in
damages. I have been speaking of C.L. and L.C.
one step further. The Law in P.C. of Ch. is differ-
ent from either. With respect to Personal Contracts
if there is fraud Ch. will not impeach but leave the
parties to their remedy in a Ct. of Law. But if the
Contract is about Real Property they will impeach
and rescind the Contract - as is the case in a Con-
tract of the Western Lands. i.e. provided he gave up the Deed
they say the Contract is null and void. So that whenever there
is a fraud in the Consideration of a Contract at C.L. the
Contract stands and the remedy is in damages. If it
is about Real Property it may be rescinded. -

But in the L.C. any fraud relates the Contract
whether in the Consideration or execution. any Con-
cealment of facts which in honor ought to be disclosed
relates the Contract. This goes further than mere plain
Fraud as lying. Particular Contract entered into in which
there has not been a fair and full disclosure of every cir-
cumstance which would have had an effect on the
Contract or might possibly have prevented its being
entered into is void. You cannot avail yourself
of any Circumstances within your knowledge and not
known to the other. and there must be no connivance.

equivocation or mental reservation, if then it is void
as supposed you wished to get a ship insured and it
is generally expected that War will be declared, and
you knew that War had actually been declared, and
parted off full speed to get him to insure your ship
he not knowing that War was declared, and you did
not inform him the Policy is void. If you had not
known that War was declared the Policy would have
been good. The distinction is that a man is not
bound to disclose his own political speculations
but facts he is bound to disclose. These speculations
are as open to the Insurer as to you. If you were
to go to an Insurer to have a ship insured to go to
India, and the Insurer was in the habit of insuring
Vessels to India you need not inform him that at
certain seasons of the year the Monsoon Wind blew
for the Insurer knows all this already. But then
comes the concealment of facts, or any positive
declarations - as suppose your ship has been out
for six months and you expect her in four months
ago, and you go to an Insurer to have her insured
and tell them you have heard nothing from her in 4
months and he insures her and you had previously
heard by another ship that they had left her in a very
dangerous situation, all hands at the pumps &c. only
6 weeks beyond her the Contract is void.

In Case it is impossible ever to lay a man
under any obligation so as to make him liable to
an action for my Courtesy you may have induced
him, being if he resists it. There may be a Case
where the Law imposes a duty on a man and he
should neglect it and you perform it for him; he can
be indemnified &c if a man turns his wife out of
doors and you support her, or if he is so cruel to his
children that they fly from him and you support them
as in either Case that is a duty the Law imposes upon
him you may recover of him. But suppose you
should break the contract of saving a man's property
which you see likely to perish. Now the Law says
the owner under no obligation to save his own
property and therefore you can't say the man can
have any obligation by any Courtesy to pay you for
your trouble. It common stampeder in the Books
is when a man's boat is going overboard
and

and he was arrested for a debt he owned and a person bailed him - now this obliged the Master very much as the Servant could go off the errand but the Person could not recover of the Master (he was an ungenerally fellow he said or he would have paid) If the master had insisted it an action might have been supported agt him but as he did not the other could not recover of him either in Law or Equity.

But it is not so in the L&M a Creditor can sue another with and his - as when a Bill is accepted for the honour of the Deedeece he has that would be the case in every mercantile transaction, as if property is about to be destroyed in the Harbour or in the Case of a week at Sea and it is saved tho without request of the owner still he is liable to pay the value of the Credity. *See'st at C&L* But if it were not so in the L&M much property would be lost and destroyed.

I forgot to remark in regard of fraud in the consideration that in Cork, he has introduced the L&M into our C&L - if the fraud is clear & plain and undebated the Contract is void, and the party may plead the fraud - as E G you know I St say house very well and frequently wished to purchase him and St came to you one day and said you may have my house at the price you offered me or him and you may have the money without going back agt him, and the fact was the house was dead and St had sold you a dead house - this is clear & plain undebated fraud and the Contract in Cork is utterly void.

Another thing in which the L&M differs from the C&L is that at C&L if you have a debt, agt two or more say joint debtors, and you imprison one and release him from prison without any security for their Debt it operates at C&L as a release of both

There is no sense in such a rule of grant. It is a C&L principle. It is not so by L&M here if you imprison one and have a good security agst the other and find that you can't obtain your debt of the one you have imprisoned - as if he is a bankrupt you may release him and then sue B and imprisonment him if he will not pay. It is no objection that one has been released. *See'st at C&L* The first de-
cision on the point was in Dyer and it was

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no doubt a mistake or never supposed according
to C & that a release of a man from prison has
a release to him of the debt. You may release
him if you take a security and why should it be
charged him when you find he is a bankrupt and
you can't get your debt and your release bind?
I speak it bold in this way. I speak of a Release
properly so called where a man executes an In-
strument under his hand and seal. Now if A &
B are joint debtors to C and C releases A. By course
should be released for the purpose becomes that C
has received his Debt. Now when one is turned
out of jail this is called a Release - but the two re-
leases are nothing alike. They are both named a
Release and by the syllogism it may be made out
But they are not the same this is not a Release
properly so called. Suppose a Ship suffers a Vol-
untary escape - this is called a release, and the
Ship can never retake the body of the prisoner
So they say if a creditor releases a Debtor from
you can this is a voluntary escape in the Creditor
it is not so. The Ship is bound to keep him in
your care by his oath and the Law if he releases him
he breaks his oath. But when the Creditor releases
him it is different - the cases are not in the least
degree similar. The principles of the Law appear
to accord with common sense and reason
the creditor may discharge one whom you find
is him a bankrupt and take the other ^{Debt} at C &

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Another small difference is the C & fines
within of calendar months - the Law can-
not consider calendar months
Again if the time of fulfilling a contract has
been to pay on Sunday at C & L tends on Monday
day is sufficient because he is not bound to tender
before it is due. But by the Law which requires
great punctuality the tender must be made on
Saturday - that distinction arises from the greater
punctuality being required in mercantile concern

At C & L tended by Statute a place in action
Court, never in sold. It was & should be offered to
sell legal actions. But it was not so in Equity
that place of the buyer was protected in Equity

that the debt was still held by the name of the original promisor, and if Consideration could always release and discharge it. If a bond was given to A and he signed it to B, and then B sent it to him, it's clear the name of A and A could at any time, release it. But Equity says you shall not discharge the bond you had sold it, you have no right to release it, and they also say to the obligor you shall not pay the money over to the original obligor. So far Equity goes.

But by the C. L. every instrument was negotiable tho some such hard Parimony Notes were made negotiable by the Stat^t of Anne. I think it only affirms that Parimony Notes payable to A or others were negotiable at C. L. I have always required the signature of Mr Chippard of Newmont in a little receipt of hand conclusion - it is however believed that P. Notes were made negotiable by the Stat^t of Anne. In Consideration supported a note made by B to A, a very tall date was made allowing it. At C. L. Chancery action can never be affected so that the Signer has the legal interest, & by Equity will protect the signee.

But in the C. L. the suit may be brought in the name of the signee. At C. L. when you have a debt against A and he gives you an order to C. L. to pay B a sum of money and B calls on A for the money A says I can't pay you the money but if you will take an order on C. L. he will pay you now if B agrees to take this order and C. L. will not pay him it is obliged to pay him provided B gives a reasonable notice, but there is no express form of notice. In the C. M. the principle is the same but the notice must be in a particular manner as this the medium of a Notary Publick &c.

Again at C. L. in all contracts not sealed you may go into the Consideration and find there was none. Look if the contract is sealed it is otherwise. It is then especially. But in the C. M. it is different. if the instrument has been negotiated you may go into the Consideration tho it was only in writing and not sealed. This therefore protects all the defences of a small as C. L. and accommodation Note. It is a very common thing for a man to give a Note to another for the purpose of

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for raising money - he can sell it - now before it is negotiated if the person to whom he delivers it demands back him on it he cannot recover anything; but when negotiated the Consideration can't be enquired into tho' there was none at all - the parties may as well have themselves enquired into the Consideration.

One thing further - by C & when you make a purchase of a man and the bargain is clinched the property rests in the one and the money in the other - it is out of the control of the parties. C & A says to B what will you take for your boy? B says 100 Dollars and A tends it, and B offers the boy - the bargain is clinched and out of the control of one or the other.

But in mercantile concerns there are cases where the bargain is complete and yet the property is under the control of the parties. This only takes place in cases of this kind C & A goes to Philadelphia to buy Goods of B who has them drawn down marked and packed for him and also gets B to charge them to him. Now at C & the bargain is closed - but B gets information that A is a bankrupt - he may stop those Goods "in transitu" it not gone out of his store or even if they have gone out of his store but A still has them in his hands. It may stop them at any time before they are affixed to a third person - that is what is called Stop puting them "in transitu" there is no such thing known at C &

INSURANCE

The contract of Insurance is generally called a policy and consists of one part called the risk to which he is exposed as per written. But it would be a contract of the same risk not a part provided it was to depend on the happening of a certain event as on a birth or marriage. It is much a contract of insurance because a lottery ticket is born or a man made to insure a ship.

The person insuring is called the Insurer - and sometimes the Underwriter. The other person is called the Insured. Some say it is necessary to inscribe upon the face of the Policy, it is intended to meet it. The Consideration paid is called the premium and the sum insured into it is called a Policy of Insurance. No other terms need be mentioned at present.

It was formerly a common practice to insure agst every kind of event such as marriages Births &c &c but which they has no kind of interest. It was also a common practice to insure ships in which the Insurer had no interest. This opened a door for wagering it was a wager. This was not the object of Insurance wagering is extremely detrimental and injurious to the Commerce only. In England by Stat^e they put a stop to all such wagering contracts. The Stat^e declares the insurance null & void unless the party has an interest in the ship. An important question arises whether these contracts were not void without Stat^e. I believe myself it is the opinion of most persons and in almost all countries that such insurance was void without the aid of the Stat^e. It happened to arise in this country in England common wagering Contracts were held good and laid the foundation for a fiction; now if was said why not allow a wager concerning a ship? Wagers on ships then became very frequent and persons by the ears &c. The use of Insurance was to divide the cost - but it was not useful to encourage a man who had no interest to insure and therefore a Stat^e was made prohibiting it. I must say that such contracts were void in all countries where no such practice of allowing wagers obtained. The Laws of every other Country say such wagering policies are void as in Russia Sweden Denmark &c. A wager of any kind is of course to the policies they are all agst. sound policy and I doubtless the Stat^e is so contrary to the C^e as that by it giving being Policies would be allowed. Be this as it may whether wagers can be recovered or not I have no doubt but that the English Stat^e is in affiance of the C^e Most Nations of course Insurers of this kind have gone out of practice in that Country and have never yet obtained here if they should be attempted I hope they may be frowned upon by all one etc. &c.

Finally.

Sed. Marshall Park Beans. &c particularly the first the order of which is strictly pursued by
Judge Reeve in dealing of claims. Insurance etc.

154.

Partnership

Men are always Partners in Trade and liable
as such when they are to share jointly in the profits
and loss. One may carry on the business and be 30 W^{ms} 402.
the ostensible trader and have several dormant
partners, yet still if they share in the profits and
losses, they are Partners, and liable to be sued and
and they may sue as Partners. If a man is not
to bear his share of loss, and is not to share in the
profits but for the sake of giving credit to his neighbour
but others seem to make use of his name and
hold himself out as a Partner, he is liable as a part-
ner, and the Creditors may sue him for their debts,
for they trusted the other on his credit.

Now by principles of C^o whenever persons are
joint owners of property, acquiring the property by the
same right and title, they are joint Owners, and
the ius accrescendi prevails! But this is not
the case by the L^l M - here they are owners in common
if A and B are trading in C^o as Partners and A
sells his share of the property wrote on his C^o.

But if C^o A and B own a Horse jointly and
A dies B is the entire owner. In C^o N^o we
know nothing of the ius accrescendi - we never had
so bad a rule of C^o - and in many of the States
it is so provided by Stat^e. In N^Y it has been
a flat which goes thus far - it enacts that the share
be no ius accrescendi - until the Conveyance be
nearly intended it shall be so.

Bth in L^l M does not exist! Suppose A and
B have 3000 Dollars vested in trade, and there are no
debts, and A dies, and C^o Bth, is to have 1000 Dollars
and Bth the other 1000. But if there is a suit, they are
action and debts to be collected, it must be collected
by the surviving partner. Then can join the
C^o and sell in it with, for the Ex^{ec} could not be
called. They would not be called in the same way
the right to sue and liability of C^o being closed and in
the

W^{ms} 444
35 Rep 4303
1 Hanc 183
2 D^o - 188,

the Survivor. But this has nothing to do with the right of property. It is only to save the forms of proceeding. The surviving Partner must account with the Ex^r for what he collects. He must partake immediately of the partnership property. So the surviving Partner did it used to be in America. debts and money 7 years ago, then he has a right to retain. The sum he pays back of the Partnership account if the Survivor will not sue he may be compelled to by Chif^t

If it may be said the Ex^r has got most of the property in his hands, if he has he must account with the surviving Partner. In no other case except these two of debt and money due is the Ex^r left power or contrarie over the property than the surviving Partner had before.

comes and pays the Ex^r a debt, he may give him a receipt in chancery and it is good, however it is accounted with the surviving Partner.

Comt 474

contra

4 Dales 248)

Laws 458)

So if the property is taken away and there is a right of reparation it exists as well on the Ex^r as on the surviving Partner. In short every right except the two above over the property exists on the Ex^r as much as on the surviving Partner. It has been contended that the Survivor has the absolute contrarie over the property - but this cannot be so to give him the absolute contrarie over it would be nearly the same as saying he has the absolute property and the authority well not authority for waiving this. The surviving partner may be a bankrupt in his private account.

The true rule seems to be this that an undivided moiety rests in the Ex^r & the survivor of the joint property as long as action remains to be collected by the surviving Partner. In case a creditor of the firm sue the surviving Partner and gets a judgment this and can find no property to levy the Ex^r and the surviving Partner is liable though in his private Capital perhaps the Ex^r has property or at any rate his estate. A who is the deceased Partner was abundantly able to pay - must it not be paid? Certainly and if the survivor's estate is insufficient above the

that the Ex. may be sued. This made on Aug.
21st by an Application to Ch^t. Bkt 21st
Oct^r we have found no difficulty in drawing out
Law and they insist that Law shew they have
no Ch^t. C^o in Pennsylvania. It appears on the
declaration that there has been a suit ag^t B^t the
Surviving Partner and that it has been enfeoffed
law and that gives a right of action ag^t C^o the
Ex. of it.

I will make a few observations as
to the rights the Creditors have ag^t the Partnership
and as to the members in their private capacity
in Case of Bankruptcy of the firm. I suppose
that B^t and Partners have as long as there is no
Bankruptcy or insolvency the property is held in
trust for debts. It is the private Company which
has a certain sum; and the firm of B^t and
Co a certain sum and B^t in his private capacity
owns \$1. a certain sum; now as long as
there is no bankruptcy or insolvency among the
Creditors may sue and take their debt out of the
private property or the firm; both the individual
and Company property is liable for the debts of the
Creditors. And the property the Partners have in their
private or Co. property is liable for the debts as
long as there is no bankruptcy. But in Case of
Insolvency or Bankruptcy it is different as seen below.

The first is in Case of Bankruptcy or
insolvency under a Law of the State. Their property
is taken from them and settled in the liquidation
to settle their accounts. May the Debt be paid? How?
The rule is the joint Co. property, say, to pay the
Co. debts; one person can't be ranked above the others
as distinctly the individual property of the Partners
goes to pay their respective private debts. This is the
first thing to be done. Now suppose the Co. debts
amount to 1000 Dollars, and the other 15. of the Co. and
Lmt 250 Dollars you apply this 250 Dollars to the Co.
debts and it pays but 5 Shillings in the pound. —
The next thing is to look into the situation of the
individual property you find he owes 1000 Dollars and
his private property is 1350 Dollars you then pay off
his private debts and there is 200 Dollars remaining
which is to be paid the Co. debts for the rule is

50% off, 10%.

is that after having paid the private debts with the private funds partly by the subscribers into his hands to pay the C° debts. And this 250 Dollars & it will leave 1st record on the pound so that the Creditors of the C° have now got 10th on the pound, & it was not a bankrupt in his private capacity.

You find that A B had private debts to the amount of 1000 Dollars and had property to the amount of 1250 Dollars; you break it just as you did w^t so that the Creditors of the C° now have got 15th on the pound. But further each Partner is not bound for the private debts of the other. Both Partners are liable for the C° debts. But the C° and not liable for the private debts of the other Partner. When the C° debts are paid then each ones share is liable for his own private debts.

Item 366
2 Mod. 279.
17 June 173.
26 May 171.

Suppose there is a Supplier of C° property and a deficiency of private property. e.g. A and B, as Partners, are out 10000 Dollars and the C° property amounts to 1500 Dollars, now the joint debts are to be paid off in the first place and then you have 500 Dollars left. What is to be done with it? & why you are to take that and divide it between A and B which gives each 250 Dollars & awes his private debts to the amount of 1250 Dollars and has only 10000 Dollars. So that he is a Bankrupt in his private capacity. But he owes 250 Dollars from the C° property, and this must also be applied to pay his private debts which would enable him to pay 1250 out of the 2000 Dollars this is 12th on the pound. And B only awes 500 Dollars and is worth 10,000 Dollars. He pays all his own debts but his property is not liable for the private debts. The C° is not bankrupt. This law applies only where the C° is involved.

Now and we're to get along when we say the joint property is liable for the private debts it's certainly not liable. But how are you to get along when you are the C° or not? This is the difficult question we're made to face yet. In England they said they made one in the Govt of A B and joint owners, a together 50th of it and the C° owned 50th of this.

Lambeth

Hoghead of Rum for his debt. Can you sell ^{the} Prop-
erty, but his debt? - It is not fair. But still
A master may his debts, and often has no alternative
properly. The property of the firm is unseizable
Well then you draw off $\frac{1}{2}$ and levy on it $\frac{1}{2}$?
They who gave you authority to do this? This has been
frequently done.

Another method is to levy upon the Hog-
head, and sell, and money as it stands behind, and
that ^{the} Bank and the vendor, and you the owners of it, But
there is a difficulty in this for many persons will
not buy if they are to become Partners with ^{the} Bank this
man ^{BB} who is a stranger to them.

Another method is this. Suppose the Debts
of A is small, one barrel of Rum would pay it.
they go into the store and levy on two barrels of Rum
one, and deliver the other to B?

Another method is to sell both and give B
one half of the amount. - But B is not a Bank
right and he does not like to have his property sold
at the post frequently at half its value; therefore
objection to levying on this method or double the
amount and then remitting one half to B. but
still it is frequently done. And there are objec-
tions to each of the modes. Some say that this last
mode is best, but it is evident that his value will
often be paid to B for the property will not sell at
this price, for near the value of it very frequently and
you have no authority to separate the Partnership
B is the owner of one half and what right have
you to sell his property? And there are objec-
tions to the first mode. I know a case where a
whole cargo was sold and it did not bring near so
much as it would have brought if the sale had
not made the vendor and Drawee together.

I however think the best mode is to levy on
the property, and sell a moiety you have enough
to sell a moiety, and if it would not sell for so
much as it is worth it is unfortunate, go the won-
er.

None of these methods can be in my opin-
ion sustained in point of Law except that method
of selling a moiety for this you can do, and
the vendor will hold the property in C with B
There is no violation of principle? In the other
methods.

method, you are taking the property of B who
owns nothing and selling it at the part you have
or you will do no right to do this. Probably they
may have some other method in some of the
States, which will be better but I do not know
of them. This has been an attempt made to

^{the} Edition of
Aug. 3^r 1821. break in upon the principle of liability in the
Partnership. To explain what I would suppose
A and B carry on business at different houses,
1822. without interfering with each other, above house
2 H. B. L. 24, the business is carried on in the name of A
at the other in the name of B; no one supposes
that they are partners, but they agree to share the
Profits. The C's have now settled the law that,
each one is liable for the losses as it inspects their
persons and this even tho' there be an express stip-
ulation, that they will not share the losses; they
agreed only to share the profits. It was contend-
ed that this was not a Partnership, but it is
settled that Creditors may come upon them
for their debts.

I observed that in case of death of one
partner his ^{Ex:} and the surviving Partner must
account with each other. But you cannot
account on the principles of Indebtedness.

¹⁸²² Oct. 7th 1825 Suppose the Survivor has more than his share
Dec. 7th 1827 Can you sue him in an action for money had
1828 Feb. 4th and received (the redaction) No, you cannot
unless the account has been settled and the bal-
ance struck. You must sue in an action
of Account, or apply to Ch^y. This is the only
way you can proceed when it is only a claim
of property; the same not having been liquidated,
and of course struck.

Suppose one of several Partners should con-
tract in his own name and as tho' it were for
himself, and does not disclose that there is a Part-
nership, now if you can show that the property
went into the firm, and was for the use of the
firm you may sue the firm, and they are
liable because it is a Partnership, Contract this
is the principle.

There is some difficulty attending
this

this Subject, about knowing whether the Partnership or Firm are liable. One Partner contracts, and gives the firm as security; now are they liable? One thing is clear that when the Security of the firm is given for what is clearly without the scope of the Partnership or firm, the Firm is not liable. - Now Merchants have nothing to do with Land. Suppose then it goes and Purchaser Park buys and gives Notes for it in the name of the firm, are the other Partners in the firm liable? it is clearly not within the scope of the firm, and the firm are not liable, unless it was for the firm, or came to the use of the firm; in this latter case, the firm is liable for them as it is a Partnership Contract. - But this must be proved for the presumption is that it is not for the use of the firm. But for things within the scope of the firm, the firm are liable tho' they don't come to the use of the firm, as suppose Mr. Buller Chese Co. and gives the C° Notes for it, and then uses it himself, the other Partners are doubtless liable for this, as it is a risk the Partner always runs. But suppose a purchase and article not within the scope of the firm, as a Clock, and gives a Note for it in the name of the firm, it may be that it goes to the use of the firm, but then it is nothing in the transaction, that looks like it being for the use of the firm, the firm would not be liable tho' the partner contracting for it would be.

The Contract made with one of the several Partners for the rest, and within the scope of the business of the firm, binds therefore page 272

One Partner has also the same power to record a Contract, as to make, if he may give a discharge on a Partnership account, if it is binding on the firm. And even after the Partnership is dissolved, if one Partner contracts in the name of the firm, it binds the firm unless notice has been given of the dissolution. All the difficulty is in saying what is notice. The dissolution makes no mention, and if it is presumed that it is known when the notice has been a general notice according to Law. When it is a matter of particular that the Partnership is dissolved all are subject to it.

I have it. The mode of notice is disregarded. —
 The usual way of giving notice in County Towns
 is to set up Handbills or to publish it in the
 New-Papers. In Cities notice is frequently given in
 the Coffee-Houses, as well as published in the News-
 Papers. And yet after this has all been done, Peo-
 sons may enter into Contracts who really knew
 nothing of the dissolution. You must then rely
 on the presumption of Law, which can therefore
 tell that all persons doth know it when the notice
 has been published in the ordinary way as the
 Law requires. It is a very common thing
 when Parties dissolve for one to take all the
 property with him and carry all the
 Debts. If man this Contract the other shall
 not be liable has no effect on third Persons
 both shall remain liable for the debts.

Property which is not the subject of trans-
 actions can never be Conveyed to the
 Person by that name. E.g. Suppose, J.S. and C.
 B. and C are traders under the firm of "J.S. & C."
 and they buy a Farm from the C°, or take
 a Farm for a debt owing the C°, now a Con-
 veyance to "J.S. & C." is not a conveyance to any
 one but J.S. It may doubtless be compelled
 in Equity to Convey over to the others but in law
 such a Conveyance vests a title in no one but
 J.S. — it is not a subject of mere article transactions
 — it must be Conveyed to them individually as to
 J.S. & C. and then it takes the Count of
 the C° and descends to their heirs etc.

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Factors

By the term Factor or Feme mean a man employed by a merchant in one County to transact business with another. This Factor acts under a Commission, and whatever the Commission is he must strictly observe it and if he transgresses he is liable to his Principal. He may not have authority, as suppose his authority is to sell Goods only at about a price, and he sells at a different one now he is liable to the Principal, but the Principal cannot say the sale is not good because he was not authorized. Now in ordinary cases the Principal is not bound by the Agents acts if the latter exceed his Commission, but here a different principle governs. The principal has left the factor up and the Purchasers think he has authority to sell, they can't enquire into the extent of his Commission. The Contract therefore that the agent makes with them is good.

Under Commission and General or Special.
The words of a Genl Commission are very technical viz "to buy, sell and conduct with as his own" he do this, these Powers being with a discretionary power to buy and sell as he pleases. But is he never liable? No, he is liable to his Principal if he has so acted that you can trace the inference that no man of ordinary prudence would have so conducted with his master as if he sold for half price &c

The Factor may be called to account for his misconduct, mismanagement, neglect but the Principal can't claim more if the Factor sells a little lower than the Goods are really worth.

At Special Commission is "to sell and dispose without the word "to buy" made with it as his own" Under this Commission the Factor can't sell on Credit and so forth, always bind himself in the Merchantile Law. Under a Genl Commission he may sell on Credit. But if under a Special Commission he sells on Credit he runs the risk being held as the Principal may call upon him for the money the moment the Goods are sold. The principal is bound to give a "quid pro quo" at the time he sells. When

July 1702

Miles 493
2 M^o 100
May 838
Oct 144

When the Principal wants to bring the Factor to a settlement, the ancient remedy was in England to sue him in an action of Account. But this has gone out of use. There never was an action of Account but in mercantile transactions. Their mode is to apply to Ch^t. for Ch^t have more power to call for papers &c. and I believe it is generally the custom throughout the States of U.S where there has Ch^t to apply to them.

In Conn^t, there is a Ch^t of Ch^t, the custom is to sue in an action of Account. It is said you can't go to Ch^t in Conn^t because the action of Account in Conn^t is so framed as to give an adequate remedy at Law; an action of A/C is different from the English action of A/C (I don't believe) that an application cannot be made to Ch^t in Conn^t to be sued you can't have a remedy in Ch^t when an adequate remedy can be had at Law but I believe a Bill in Ch^t may be filed in Conn^t for the creditor has not the same power as Ch^t has to call for papers &c.

It is a common thing for one gentleman in a foreign Country to act as a Factor for several houses or firms who are strangers to each other. Now altho' they are strangers, they have often to run a joint risk. As suppos'd he is factor for A B C D, and each of them has about five thousand yards Broadcloth and the factor makes a joint sale of it to one man. He has a Consignment allowance, time to sell on Credit, the vendor paid one half down and was to pay the residue in One month. - But before the end of One month the vendor failed and each one of the merchants must bear and stand or fall if the loss is a joint loss. Suppose he had no authority to sell on credit, he would then be liable to the merchants for the whole, and if the Factor becomes bankrupt the debt must be an equal dividend among the merchants and one of them can't be said to himself his debt by due debt come as he may up to £^l this is a mercantile case although I have nothing to do with £^l that he will and I must be divided as a joint risk which occurs in all mercantile transactions (there is a clear distinction between the cases of personal and real property).

The question is arisen, the Factor is employed
by five different Merchants. he draws a Bill of Exchange
in favour of somebody on this & Merchant - it is
handed to one and he accepts it, and it turns out
that there is a loss - now the question is can his ad-^{Salk 120?}
vocated friend the other ^{Dawyer} ^{Magazine}? In a late decision the
Court held that the others were not bound the acceptance
of one cannot bind the others unless they are in
Company; but these merchants were not a Com-
pany. There is no doubt but that this is correct
I think and yet in the report of one of the decisions
the Reporter adds, Sed etiam quicquid hoc.

You see then what is required in the Factor
is that he be as in other Agents, fidelity, diligence and
honesty, he is not liable for inevitable accidents.
and he is only to use ordinary diligence, and there
for he is not liable for loss by theft of ordinary care
has been taken.

So on the other hand the Principal must
conduct fairly fair if he by misconduct or fraud
subjects his Factor as to the Principal has sold him
Goods and when cuts them to be of such a kind and
not damaged and the Factor sells them without
opening the Cales. as undamaged Goods without
meaning any fraud. (as he is believed by the Law
a case presentation may be made to the Purchasers anyway)
comes on the Factor and subjects him but the
Principal is liable to the Factor for his damage
cation and the Principal is liable to the Purcha-
sees if they choose to resort to him instead of coming
on the Factor.

This has been a set of decisions on a par-
ticular point which appear to me strange ones.
Now a Factor when employed as above to transact
Business in a foreign Country was send out
ships have the directed her and charge them up
his A/C current with the Merchant - now it is
not an uncommon thing for him if he is not
a honest man and wants to defraud the person
to run the Goods, then know he will have to
run the risk and if he is caught he will be
able to his Principal, and the punishment in
many Countries is hanging. Now if they can get
clear of paying their and charge them to the Merchant
as paid for him they make money.

Lord W. 89

Adroy 495

4 Coke 84

Co. Fa. 408.

Bisham 143

Co. Fa. 255

Brownell

Factor vs the

Cou. Oct. 18th

It seems to me strange that when this came up before the Court it should decide that the Factor was entitled to the Charge and that the Plaintiff could not question it. If he is entitled to recover these charges it is giving great encouragement to Rogues to break the Law. The Principle is in the way or connives at it. He ought in some respects to hold the Factor to the Charge. It is no otherwise bounding between them but in Consideration it is an illegal Contract and would not be bind any in Law.

Aug 11th 1783 Vol 3 page 20

The shall by the Factor remit me partly
and the Principle whatever the Factor does with
the money. But the Factor cannot pledge the
Good for his own Debt if he does it will not be
good in the hand of the Plaintiff. But in this Case
he must be a known Factor for if he is not
but appears to be the owner the Plaintiff will hold
the Property pledged.

2 Nov 1783

The Factor is very often limited in his pur-
chases he is allowed to buy only so much
now the Court in one the Plaintiff is still
bound for the purchases upon the ground that
even one who trades with him cannot ex-
pect more to the extent of his Commission; the
Plaintiff has held him up as his agent
and it is always presumed that he will not ex-
ceed his authority. The Factor however is answer-
able over to his Plaintiff for exceeding his authority.

2 Nov 1783 Vol 3 page 489

The Factor is not like other Agents in this re-
spect. All Agents are liable for damages if they
exceed their Commission. But the Factor if he
exceed his principal by exceeding his Com-
mission not only pay the damages but the
loses all his wages. This is altogether a differ-
ent rule, but the Rule the Court probably can have
and his Principal is dissolved. Neglect of duty by
which a loss happens will make the Factor as
responsible as it he transgresses his authority - as if he
is directed to procure an insured and does
not, and a loss happens he is liable.

When a Factor is publicly known as a Fac-
tor and the Plaintiff has a suspicion that he
will soon fail he may notify all the others

not to pay their debts to the Factor and then they cannot, or if they do they must pay it over again to the Principal & if they are obliged to pay over again to the Principal they much Care on the Factor and recover it and I have often seen it worth its value the Contracts are sometimes made in the name of the Factor and sometimes in the name of the Principal and it makes no difference in whose name the ~~name~~^{value} the Contract is.

If a Note is made payable to the Factor he has the legal title to it, but the equitable title is in the Principal. You will remember that this applies only to Factors publicly known, if they are private Agents merely it is very difficult they then are supposed to be Traders in their own name. This was remarkable the case previous to our Revolution - all the Merchants south of Philadelphia were private Factors, (such as Coteshead) and conducted business as tho dealing for themselves, - the Principals happening thereby to fail notified the debtors not to pay them, they however did pay the Factor and the question was "Could they be compelled to pay over again to the Principal?" - determined that they could not, the Factors were not publicly known as such.

The Factor has a claim upon the property in his hand, not only for his Commission (which) for the balance of the account between him and the Principal: - he is not obliged to let the property go out of his hand till he is paid. Factors are frequently men of great property and advanced money for their Principal for which they have a lien on him. Bun 489

The Factor is often a merchant himself, and when his own interest and that of his Principal clashes, he is required by Law to take better care of his Principals than his own, e.g. suppose he sells 1000 Dollars worth of his Principals Goods and 1000. of his own on Credit to "P.S." and so much more afterwards & if he pays 500. Dollars they may still be liable to the payment of the Principals debt. So in this case if he pays 500. Dollars more, they may still be liable in the same way. - and if P.S. becomes insolvent and not able

to pay the whole the Factor must lose it.
 This is proper for if he could pay himself first
 having thus ruined the Prince had he really
 known that he could get 1000 Dollars out of it and
 yet it would be dangerous to trust him to a
 greater amount. The Factor must have Con-
 fidence in the Vendeer when he knows that
 the first payment goes to satisfy the Principal debt.

Item 638
 1 Sack 100,

One thing further as to Factors which is unknown
 at C. L. If the Factor having Property in his hand dies
 or becomes Bankrupt the ^{or} in the one case, or
 affirms in the other has nothing to do with the Prop-
 erty if the Principal - if the Goods can be accounted
 & they belong to the Principal and he may take
 them. In some cases they are so mixed up that
 they cannot be accounted for separated, or if the
 money is all thrown into one drawer, now in
 such case it must rest in the affixes, or Ex and
 they are liable over to the Principal. In case the
 man is solvent and dies, that will be the
 same the Principal will lose nothing. In case
 of Bankruptcy it is sometimes a very hard case
 the Principal will be a loser.

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Of Stopping Goods in transitu

This is a right Merchants have of stopping Goods, after they have sold them - nothing is more for
cause to stop them, than this - if T. sells his Horse to P.
and P. takes him and gives his Note payable six
months hence, that moment, he takes up the Horse
and neither party has power to recuse, and P. may
say, lay on the horse immediately and I have no
right to demand him tho' he find P. was a rogue and
a bankrupt. Now a man that sells Goods to another
and the Vendee becomes a bankrupt, immediately, if
there were no right of stopping them in transitu.
They would stop in the Vendee, and the Vendor would
have to sue with a dividend, but the Law has pro-
vided that they may be stopped in transitu. This
is a creature of the Law, and this may be done tho'
the Goods are delivered to the Vendee e.g. Suppose the
Goods are taken down recked off, packed up, and
charged now at C. L. these Goods would be vested
in the Vendee, the Contract is at an end, Bickley,
the Law, the Vendor finding the Vendee is a bank-
rupt, may stop them, and not let the Goods go out of
the store. Again suppose the Goods are delivered to the
Vendee, or are to be carried to a certain place, they are
taken out of the store. After the Vendor may have the
Goods stopped, the same as if they had been stolen.
If the Vendee is not a bankrupt, then even the right is an
uncertain thing. This Law is established to prevent fraud
of the property, has raised a value between the time of Sale
and delivery, and the Vendee is not bankrupt, toward
and bring his loss, for the increase.

Now, when the Goods are delivered, and in the possession
of the Vendee or his agent, as it goes on board to go to the
House, or delivered at the agents place of abode, the transitus
is at an end. It is not absolute, but on board of the Carr
Conveyance which conveys them to the place, and is
not beyond the agents. When a man is bound, the goods
delivered to his agent, are out of his hands, & if he
is then an obstinate bankrupt, & if he will not pay, he
has been obliged to be a responsible holder for a valuable trans-
action in case the Plaintiff holds the goods, in this world
or the next. Perhaps, it better seems to. That has been determined
that he is, if the bill is a clean bill, not worth that will
convey the bill, but if it is in the signature, transitor is not an
obligation to him to make it a negotiable instrument.

20th 1805

25th 1803

25th 1803.

173

174

175

170

1787

179

180

Ley Mercatoria

Bills of Exchange and
Promissory Notes

James Gould Esq.

1811.

The Law of Merchants is a system of usages
peculiar to mercantile transactions.

The Law of Merchants has been usually de- Laws 240,
nominated a Particular Custom, but may be
conveniently so for several reasons - *N.B.*

1st It is not local and consequently can't be Volume 75
a Particular Custom which is local

2nd The Law Merchant is not required to be
proven specially like judges being bound to *Salk. 125*
name it "ex Officio."

3rd Particular Customs are provable as
matters of fact but the existence of the Law
Merchant is not proved by witnesses and con-
sequently is not to be used as a matter of fact.

It is true when there is a doubt a number of merchants may be called in to state their usage. 1837, p. 298
Mr Gould however considers this as 2 Decr 1808
a means of giving information to the judges. D^o 1322
and not to the jury. Aug 6, 1823
The judges consult their 1837, p. 653
views at any one time or a Dictionary. 3 Decr 1830
4 Decr 1830

Formerly the Law Merchant was in operation
 about 1295 only, at Boston Merchant by his affection for it,
 Decr. 310 a Bill had been drawn by a Druggist it would
 Boston 1489 not have been governed by the Law Merchant. This
 Decr. 4617 however affords no instance. Bills of Exchange are
 Edw. 1450. But at present this Law is not confined to
 Boston 1430 any particular class of men. it is a branch
 of Common Law.

General nature of these Instruments.

A Bill of Exchange is an open letter of Credit
 Boston 1457 it generally expresses from one Person to another
 Decr. 1517. or his requesting him to pay, a sum of Money,
 upon him or to any one to whom it
 is directed. Boston or to any one to whom it
 is directed. It is to be paid on
 Decr. 1527. that person may appear. It is to be paid on
 it is to the bearer, generally, without naming
 any particular person.

Aug. 13-1544
 Philly 37 &c.

On the face of Bills of Exchange are -

The person who makes the Bill is called
 Boston 1467. the "Drawer" and he to whom it is directed.
 Oct. 1586. the "Drawee" or if he accepts the "Acceptor"
 Philly, 13. he to whom it is to be paid is called the "Payee".
 Oct. 22-3. and he to whom it is to be paid by the drawer
 May 4. is called the "Endorsee".

A Bill of Exchange is in fact an acknowledgment
 Nov. 1588. of a debt which the Drawee owes
 Philly, 13. to the Drawee.

A Bill of Exchange differs
 from a Common Draft by being negotiable.

This negotiability of a Bill of Exchange
is the grand incident which distinguishes
it from other Choses in action.

A negotiable Instrument is one of which the <sup>17 Mart 2.00 p.m.
No. 232 int 1
2 B Rom 442</sup>
legal and equitable interest is translatable

The rule of the Law in this Case is opposed
to the rule of the Law in relation
to Choses in action, in general, for by the
 latter a chose in action is not assignable.

No Instruments are negotiable which
are not created by mercantile transactions.

If an obligor in a bond assigns it he may
still exceed the debt and what deprives the
assignee of all benefit, for as the debt must
be brought in the name of the name of the
obligor it follows that a release from him
either before or after assignment will bar him.

The rule that Choses in action are not
assignable is in force in Gen^t. - this ap-
plies to promissory Notes, Covenants, and the
 like. In England Promissory Notes
are made assignable by the Stat^t of Anne
which Stat^t is not in force in this State. -

Bills of Exchange are negotiable at Com^r
Law, and consequently in Gen^t. The practice
of a Chase is not now considered as an offence
either in England or Gen^t.

*Bills of Exchange
Stat^t of Anne
payable at demand
or order to the amount
not less than \$350 where
and paid on the
same footing as
landed and Merch^t

Pennington, No. 111 at Cottenham would if negotiable
be sold, are not negotiated. Courts of Equity in
England have always protected the assignee
of a lease in action when it was made upon
a good and sufficient consideration. If the
defender in 282
D. 1540, original creditor affirms it and afterwards re-
leases, by 1595, 1692 leases, he will complete the debt so long as the
defender in 1692 affirms, and the assignee may
affirm 1692 being a lease in his own name in a Court
of Equity, 151

The Plaintiff sue the Defendant for money
length and protection significantly exceptal-
lowing the affixed. To maintain the action
in his own name. The affixed may
maintain an action at the Court for damages
& queen should against the original Plaintiff or the crown for
it not be affixed
or committed
to the Court in his own name upon the in-
strument. The Plaintiff an action at Law will
lie for a violation of an established right. But
not in England.

An Order-in-Council may be signed by you
47 Rep 600. in your name or by proxy.
November 29. An affiance of an Order-in-Council
1867-212. aged Education to draft a Constitution.

thought this is only an equitable right - 1 Bl Rep 820
2 Bl Com 820

If it has been agreed that if an Assignee or Creditor of
a Bond, after he had assigned it, becomes
Bankrupt, the assignee may bring an action 1 Bl Rep 619
in the name of the unencumbered Bankrupt
tho' generally speaking no unencumbered Bankrupt
can maintain an Action.

In an action on a Bond given to A for
the use of B, the Debtor may, set off a debt 1 Bl Rep 232
due from B to him. This is a strong argument 4 D^r 430.
where the Creditor has recognized the equitable
interests of the assignee or Trustee. page 231

It's granted Doubts very much whether these 2 Bl Rep 303
cases are now considered at Law. 3 Bl Com 108
4 D^r 603
5 Bl Com 5

It is a general rule of C. B. that he who sues 1 Bl Com 330
upon a Simple Contract must State and 7 Bl Rep 351.
Prove a sufficient Consideration in Deeds 3 Bl Com 1039
and Specialties imply a Consideration. 2 D^r 1449
7 Bl Rep 47

But in Actions on Bills of Exchange it
is in Genl not necessary to Show a Consideration. 1 Bl Com 445
"Actus non sit," a Bill of Exchange tho' not a 2 Bl Rep 445
Deed does not require a Consideration for 3 Bl Com 70
like a Deed it implies a Consideration or Con- 4 Bl Rep 487
trary internal evidence of a Consideration 2 D^r 768
and this is owing to the favour which the Law 3 Bl Com 48
shows to mercantile business and 115 26, 185
2 Bl Com 450

But to the general rule there is an exception
viz - where the holder claims a bill transferred
Chit. q. 51. Sec. 44, delivery as cause of it, and under
D^o. D^o 1. 209 sufficient circumstances the may be called
+ shown, upon to prove a consideration. -

2^d Ban 1516. If a Bill be presented in a form the
D^o. 1523 holder may recover without proving any
consideration given by himself. -

But it is to be observed this exception
will not apply to Bills transferable by delivery
and where the holder is neither named, as
payee or endorser. The payee and endorser
are both bound to show a consideration.

At the Puff according to the former
rule if 4415. there is not bound to show a consideration
Chit. q. 51. the Dft is not allowed to prove a want of
Bills 17. consideration. Except where there is an imme-
D^o - 119. diently followed the parties.
Postig. 554. The Chancery says the same and say there is no judicial autho-
Thys. 27. 627. rity to suppose it
S^t 2^d to support it
thus rendering un-
questionable what is
the language intended
2^d Genral 242.
Evans 646. by way of defense that there is no consideration
2^d Rep. 1^s 83. The reason of this exception is this. - What a
Thys. 280-4. beauties of a Bill after it comes into effect
Giff. 52. ground of sufficient. because such a transfer is
D^o - 113. out of the regular course of mercantile trans-
actions.

3^d Rep. 582-3. In an action brought on such a
4^d Rep. 423. Bill the judge will leave it to the jury to prove
Note. 1. Same that the holder knew the defect before -

Bills of Exchange are of two kinds
Foreign and Domestic.

Foreign are those which are drawn in one
and payable in another. Thd. - 107
Domestic, those which are payable in the
County where they are drawn.

Bankers Checks differ from Bills of Exchange in that they are uniform by law as to Beaver, and never to Rider? -

These are in their general nature like Bills of Exchange, and therefore like them are negotiable.

These Checks are never given
but will demand in case - in this respect they differ from at Bills of Exchange payable
at a particular time. -

Such as these guarantees in the same as 38 Ban 1577
that of a Bill of Exchange that are declared up to 20 of April 1833,
or at Bills of Exchange. etc.

It has been said that they are not likely
to be compelled, but Chittell says he knows
not upon what their opinion is founded. —

These Checks are called and used as Cash.
They are England a Circulating medium but not in Circulation.

If these Checks are not demanded within a reasonable time and the Banker fails the holder must bear the loss.

13 Feb^s 1 What is a seat in the time it now Considered
Bauer 1482
Feb^s 4 15^s as a question of Race to be decided by the County
Dec^s 50 91^s recent formerly - took the jury must find 2 the more
Dec^s 5. 13 18^s the field.

Parties. - All persons in gen^e. having
mutual understanding and local capacity to
enter into contract can be parties to a Bill of Exchange.

Corporations also can be parties to a
Bill of Exchange. But then, must not they
agent and in no other way.

The Bill of Exchange is drawn by a Person
1st Feb 1812 & so much Legally Capable yet still all others
Chit 21 are Considered by a Term Court makes a Bill
an Indorsement Legally Capable would be Considered
and so would the Acceptance if he is Legally Capable

Mr. Thos. H. Jackson but very incorrectly
Hyo 2. 3 that there also four original "parties" to add to the
Chibby 22 of Exchange - three and evidently four "Hyo"
Prather, Prentiss and Payne.

It is in no case necessary however & both
need not be used at the same time, one in a
^{or persons} office & the other in a
Court and indeed a Bill is good with only one.

Walt. 130 There may be but two malignant persons.
6 Shod 239. Rich & his friends will have no favour of another
kind. - 3. upon himself payable to his own order. - -
Philly 487

January 5th 1872 Post Office Exchange may have lost one
January 15th received back cash & 100 Dollars a Bill on you
February 22nd

Sum of payment to himself that Bill is good. 3 Bowne 1577
Sect. 281.

By accepting the Bill the acceptor may become a party for if the Drawee will not accept it, may demand for the honor of the Drawee or for the honor of the Endorser, or for the honor of all may accept. Such acceptance unless however be after a protest for non-acceptance.

Time of payment after a protest for non-payment for the honor of the Drawee or Endorser. Payment may be made for the honor of the bank.

A person may become a Drawee accepted or Endorser not only by his own immediate acts, but also by the act of a partner or agents when he is said to draw in consequence of accept by indorsement.

If the act of the agent is merely ministerial, the agency may be constituted by him, but he is legally incapable of acting for themselves as infants. ^{1 Inst 6^a 52^b} Chitty 242

An agent may be constituted for this. ^{Bowers pl 80} To impose merely by way of power of attorney is sufficient. ^{12 Mod 504} A Bill of Exchange is not a deed, but a simple contract.

A general agent acting under general authority may spend his principal to any extent.

1864 Feb 15th 155. Court. Court a Special agent acting under or
w^t D^r 618 limited authority, must manifestly be Con-
ceded to those clients which have been ap-
pointed for him.

Dec 4th 1496. A Person signing his name upon a blank
or plain back paper and delivering it to another to be used
Dec 7th 1514. by him will authorise the latter to file it
1864 Feb 13. for him. will authorise the latter to file it
Aug 2nd 1510. kept with any sum however large.
Chit 25.50 This is called by Ed. Blackfield the Law of Pow-
ers 1550 & it is an independent authority in
Persons see 118. This may be held as to duty this must be allowed however,
4 June 1520.

If it was universal rule that an agent
1864 Feb 15th 1530 can't delegate his authority to another under
of the 75th. The Principal & his agent both have their So
Chit 25.50, 25.75 to do.

Conc^d 15th 1514
9 Coke 75 An agent when he draws receipts or ex-
15 Reg^o 705. changes must do it in the name of his Principal
6 Stephth 176th or else it will be his own act.
Aug 10th 1555. 15 Stephth 181

1864 Feb 12th 1555 One of two joint-Traders may say an except-
1864 Feb 17th 1555. ance in the name of both & bind both Parties if
1864 Feb 14th 1555. it is within the scope of their Merchantship.

1864 Feb 14th 1554

1864 Feb 27th

1864 Feb 24th 1555

1864 Feb 1st 1555

</div

will bind both Partners unless the holder of the Bill is
the bill was acquainted at the time that it is Exp'd 5/24
was for the benefit of one Partner only.

If a few hold a bill if two persons
not otherwise partners make a Bill together
payable to their own order they are "bound
lire" - ^{Watson 8/25/3}
partners. - It will follow
then that one of them may indorse for both
in the name of both, and that other will be
sated. This is however sometimes doubted.

If a Bill is held by Dr. Mans-
field, that he has showed him to
give in evidence that that is not customary
and consequently illegal. But it is to be ob-
served that in that case signature of the in-
dorser was signed by one only of the partners
and not in the name of both.

If a Bill is drawn on a Corporation it must be accepted by the agent of the Corpo-
ration if accepted at all.

For signing by agents see

Form and Requisites.

It may be remarked in gen. that no par-
ticular form or set of words is necessary or
essential in the creation of a Bill of Exchange.
These instruments are only legally establ'shed.

Watson 8/25/3
Dugay 1
Galwick 8/3
Vicars
653.
This Rep 18
Chitty 26/3

Chitty 29
Note 2
Salk. 126.
Edw Ray 175
D. 1484

Hod. 207
Sly 62c
Edw Ray 1346
8 Ed. 344
Corn Distr.
Littleton 102
B. 11-2
Chitty 31, 58.

35 Willow 213
26 Blk 1072
5 Sep 485
7 Sep 241
1 Oct 239
30 - 242

Note 3 These recognisances are also made by two witnesses.

Note 3 These are sometimes said to be three tho illogically,

Pages 257-8 1st That the Instrument be payable at
35 Willow 213 all events and not upon a Contingency, —
26 Blk 1072
Sept 1151
D° 1271 2nd That it be payable in attorney only,
7 Sep 241 and not in Goods with Money and Goods, — in
1 Oct 239
D° - 242 3rd It is sometimes said it should not be
payable out of any particular fund, but
this is included under the first

I see Instrument tho drawn for attorney,
if upon a Contingency is never a Bill of Ex-
change. — Bill of Exchange are for the sum
35 Willow 213, paid by Councillor's Committee. But this will
Bill 325 not have that effect, for it is to be presumed
Sept 1151 that no man would accept an Instrument
Aug 58 which may never be drawn or called on at
the Contingency may never happen — —

This is the same reason a Bill made
26 Ray 1382, payable out of a particular Fund, is not a
D° 1396 Bill of Exchange, it can never become nego-
C° - 1403 tiable as it is Client's duty to his attorney to
Aug 398 pay, so the D° is not a Bill of Exchange, as soon as he has received
5 Sep 482 pay, he is not bound to pay, as soon as he has received
4 D° - 343 such sum that it is a Bill of Exchange, and
35 Willow 207 is not negotiable, but negotiable in its nature on a number
of D° 3782, is not negotiable, but negotiable in its nature on a number
of 592, 1151, 1211, 1400, & 1580.

It occurs however that as between the parties it may be the foundation of an action and tho' not negotiable may be declared on at Law. —
Thereupon opinion, took the above to be the Committee
of the House of Commons, that the
same is however an exception to the
general rule that a Bill of Exchange is not ne-
gotiable if made on a Contingency, i.e. if the
Contingency is of general notoriety, & morally
certified and relating to war, &c, or an offi-
cer in the British Navy made a Bill may
be whether the same should be paid off.

If this depended upon Private Credit it
could never be a Bill of Exchange, but it is
evident it depends upon the Credit of the Brit-
ish Government.

If the Bill is payable upon an event,
which will inevitably happen, i.e. withdrawal-
ing of his pay may be at a great distance. Then
it is good, e.g., a Bill is payable at
the death of another.

But tho' a Bill of Exchange payable
out of a particular fund is not good, yet if
the particular fund is mentioned neatly, so
that the Drawee know to discharge himself.
it does not make the instrument void, it is
a good Bill of Exchange, e.g., a Lawyer
makes a Bill as follows, "Pay, the sum of, Doug. 57/
100 £. within a certain time, at my half pay,"

73 Rep. 243
5 D. - 485
82 D. - 183
2 D. Rep. 10. 2.
Third 58. 05
Thirty 33. 48

Aug. 34
Aug. 57

144 Rep. 262
Rep. 272

Aug. 12. 17
Jan. 226
Aug. 57
Thirty. 33-4

Aug. 762
Sept. 1481
15 Oct. 12.
Aug. 57

X
25 Aug 1857
a/c 1845
7 Dec 733.
Chitry 34

Words inserted in a Bill of Exchange for
the purpose of pointing out a Consideration
on which the Drawee would withdraw
Drawee to accept it do not vitiate it.

Augd. 50 New Order for the delivery of Goods is made
Chitry 34 a Bill of Exchange for what must be for money,
Aug 12 1871 and attorney, only.

10 Oct 1871 Aug 12 1871
Augd. 60 in any part but by payment of attorney is a
Bill or order for the payment of money only.

It is not to be concluded that an instrument
Augd 58. 65, which does not contain all the required
Aug 10 1872 items of a Bill of Exchange is therefore void
Chitry 48. It is not a Bill of Exchange in law, but it
6 Sept 1873 may be a foundation of an action between
7 Oct 1873 the parties. It may be evidence of a true contract.

The instrument is a Bill of Exchange
Aug 9 1873 of any thing merely, extended will not be
Augd 61 vacate it.

In the case of foreign Bills it
is usual to make two or more Bills of
Exchange so for the payment of only one
Chitry 46. sum. but where this is done each Bill
should refer to the other as "Pay this my
first Bill provided my second and third be
are unpaid, and also "mutatis mutandis."

Every Bill of Exchange should regularly

Specify to whom it is to be paid. But it is not necessary to specify the particular Person by name. e.g., to Beauer et al. Chitty 467.

It is said if a Bill mentioning the Person from whom the value is supposed to have been received does not designate the Person Marshall however he paid to such person if this is however questionable and McCoull thinks it rather too costly

A Bill payable to a fictitious Payee
or order, is void in legal effect - construed
as to bearer against those Parties who were
acquainted with the Payee being a fictitious
Person. But as to Person who did not
know of the circumstance it is void -

It is said that a Person bearing the name of
a fictitious Payee is guilty of forgery, page 94 Subject
Criminal.

A Bill may be drawn either on another
or to a payee back for the sum of £100
Aug 18. 192 Thos 108. 6 Shillings 12 pence
18 Oct 31st 313.

If a Bill does not contain operative words
of transfer as "order", "affit" and "bearer" -
it is not a Bill of Exchange but a mere
Draft and not negotiable

The words "you value received are not
operative to the existence of a Bill of Exchange.
Who generally insisted for a Bill of Exchange
is "Borne". It implies a Consideration

190

Hyd. 67-D.
Aug. 2 P.M.

Aug. 9 10

Hyd. 71

Billy 50

Dec. 9 34

The same will apply to an endorsement
of the bill.

But to entitle the holder to damages

and interest against the drawer or endorser.

These words are necessary in England. This how-

ever is a local regulation, and consequently

has no force here.

If the Bill is for accommoda-
tion only and that fact is known to the endorsee
he can recover no more than he has actu-
ally paid.

Recd Rep. 261

Recd Rep. 07 Decem for the sum of £ 100

D. 210 money on the credit of the Bill and inst-

2. Cained 348 for the purpose of paying money

Accommodation Bills are
drawn for the mere purpose of raising
D. 210 money on the credit of the Bill and inst-

2. Cained 348 for the purpose of raising money

When a Bill is drawn for money ac-
commodation paid and in the regular course of business

the endorsee can recover the full amount £ 100.

He has never paid as much as is contained in

the Bill, but he holds the surplus of what he

Paid to the use of the endorser, and the latter

may, recover it in an action of Rediles-
tation "affirmans et"

In all cases where the debt may exceed

want of consideration, he is allowed to overlast

Recd Rep. 445 it is alleged.

*This is not true

Recd Rep. 445 it is alleged.

The reason of law is -

Ex. Lufi's Cause non ordinis alio.

Aug. 8 35

Recd Rep. 445

Aug. 8 36

But as between the parties who were
immediately concerned in the transaction,

as

an illegal Consideration is always a good Doug. 1836
defence.

A third Person was originally Con-
cerned in the original illegal Satisfaction Rep. 166.
but knowing the Consideration to have been Off Rep. 61
illegal can never recover against any Party Contingencies
Rep. 1826. P

It has however to be decided what a third
Person who had been induced to put his
name on a Bill, mainly at the request of the Holder Rep. 1818,
Holder, may recover against the former for Cabilly 52-3
by after he has been compelled to sign the Bill
This seems to be an exception to the General Regd. 280.
This right however arises out of Payment of the money he is an Insurer - Doug. 1844
Regd. 636.

In general any Holder of a Bill upon a Regd. 300
fair Consideration who has no knowledge that Rep. 307
the original Consideration was illegal may Regd. 607
recover against the Drawer or Endorser. 307 Rep. 464
but if it had been an instrument not nego- Regd. 80-3-537
tiable he could not recover. 87 Rep. 360
Regd. 155
307 Rep. 80
13 Rep. 145

Exception.

5

1st No tie got over above but's
own there is an exception where the inno- Regd. 283-4
cent Holder accepts after it becomes due. -

2nd Another exception is where the Bill
is declared by Statute to be absolutely void
as where given on an unusual Consideration
Doug. 640
Reg. 1870
Reg. 1155
Gath. 356
Reg. 312 647
Doug. 687
Reg. 1874
Reg. 1874
Eas. 1. 62

But in these cases in which even the
Scot Law has declared the Bill to be of no effect

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vald, yet if the payee indorses he is liable.
 This in consequence of the illegality of the
 Bill of Exchange. Consideration the Drawee Banker liable
 Date 9/15 The indorsement is in the nature of a new
 Date 7/16 Contract - every fresh indorsement is in the
 Note 4 nature of a new Bill of Exchange.

Mr. Pitty, in his Treatise on Bills of
 Exchange, says that the innocent holder
 can release the Bank from his only known
 whom he has immediately received the Bill
 hitherto 53 The Cates no authority. - And Mr. Gould thinks
 1 East 92 The Case stands on his ground the indorse-
 ment is in the nature of a new Bill and
 the indorsement must stand upon an illegal Consideration.
 Mr. Pitty, however, says only, that
 and consequently that it is not violated by
 the indorsement. He says that
 Pitty necessary its mere fact negotiated. He says that
 thing more his
 contrary to law, is no reason which can be given the support
 induction before
 Note 5 Mr. Pitty's opinion.

(Footn. 36) Bills are sometimes and indeed often
 (Q) made payable "at your advice." With his note
 (Footn. 36) The Drawee is never to pay it till advice
 (Q) is given by time received.

Mr. Gould seems to think that this is
 contrary to the rule that a Bill must be
 payable at all events but as this is clearly
 (Footn. 36) said it can only be considered as an exception
 (Footn. 36) Dray 1370 In every Bills of Exchange the name of the drawee
 (Footn. 36) 1542 or should be indorsed by himself or by his agent
 (Footn. 36)

Bills of Exchange and indeed all negotiable Instruments, have always been very generally expounded, in yet the whole of this System is founded on simple Principles. The Genius of Mercantile Law is very liberal.

It has been decided by Ed. Mansfield, that a Note concluding thus "I promise never to pay" was good, for it does contain a "value received."

Bills of Exchange are generally construed according to the Law of the place where they are drawn. This rule is not however an universal one tho' a genl. one.

Ley Doc. A few observations concerning the Ley Doc. in Gen.

There has been very little said in the Books with regard to Contracts made in one County and executed in another.

Now it's very clear that a Judge can admit new no. of Excs, but those of that County to which he belongs. As to this it may be said that the Law of a County in which a Contract was made, is "quoad hoc" a part of the Law of that State in which the action is brought, & if a Bill of Exchange drawn in England or a man in the U.S.A. without having a stamp according to the Law of that Country, which made that

140 Blk 72. 6
2 Dux 733
183 H. & C. 141
24 Den 447
28 H. & C. 603
Gospur 171 P
2 Dux 1677
7 Trop 18 242

messing, was held in re of to be paid. tho' in the latter the Drawee was not required to make a Bill good, which is made in this County.

But with regard to the time of payment
 Bawd 1251 the "Ex & Soli" is not observed as, when the
 Chitty 59 Bill was drawn in Amsterdam may a Bill
 in England at two instances. See the "Ex & Soli" of
 the County in which it was accepted or used.

Thy. 80 Full Hyd. questions the propriety of this
 rule. tho' all Goats thinks not reasonably.

But the form of the remedy of the recovery
 must be according to the Laws of the Place
 where the recovery is sought. But the extent
 of the remedy must be according to the Laws of the
 Bawd & Bell 138 County in which the Bill was drawn, e.g. the form
 Chitty. 80 of the remedy in England is "in debitis summa-
 bitis" - And in France where the Bill may be sub-
 jected to have been drawn another form may
 exist.

A Bill of Exchange when drawn is reg-
 Chitty. 81ularly to be delivered to the Payee.

The delivery of a Bill of Exchange operates in
 some Points for the delivery of Goods in satisfaction
 of a former Parole Contract. - Hence if a
 man receive a Bill in lieu of a Debt the Court
 consequences an action upon the Parole Contract
 done with unless the Bill becomes pay able, and is not
 accepted by the drawee.

The most usual way is
to count on the Bill
and also on the original Parol Contract for
the Bill does not extinguish the Parol Con-
tract, as in the case of a bond.

120000 \$17
60000 \$52.
70000 \$4
50000 \$13.
10000 \$3
P. 77 100.

If a Bill after it is declined be altered in
any material respect and without the Consent
of the Drawee he is discharged - "if so facto" -
and this rule will hold even against a "bona
fide" holder or receiver. - The reason why the
Bill so altered in the hands of a "bona fide"
purchaser is not good against the Drawee is
simply this - that it is not the Bill of the
Drawee and consequently that he can't be bound
by it.

The rule is the same with regard to
the liability of the acceptor or endorser if the
Bill be altered without their Consent. Authorities.
Sapra. -

But if the Bill be altered before accept-
ance and then accepted, the acceptor is lia-
ble to a "bona fide" purchaser also if the Bill
be altered before endorsement - the endorser is
liable to a "bona fide" receiver - for the endor-
sement as altered is his act, and not the act
of the Drawee, and so in the case of acceptance.

And the Consent of any of the parties
the Bill will stop him from taking
any advantage of it. Sapra. 330.
Chitty 93.

it may add, incident that the Party making
the alteration without consent of the "Proceeding"
Parties can in no Case recover for "any damage
caused upon such action". - The General
11 Coke 27^a with respect to alteration may be seen in-

The obligation incurred by the Drawee
by making and delivering a Bill
of Exchange.

Every Drawee by the very act of
making and delivering a Bill enters into
an implied engagament with the Payee and
every subsequent Convene his "Holder" of it, to
Observe the following rules. "Viz"

1st That the Drawee is legally Capable of
accepting it. —
2^d That the Drawee is to be found at the
Place of residence described in the Bill.
3rd If there is any description at all in the Bill
itself. —
4th That on due presentation of the Bill,
the Drawee will accept it in writing and
sign it according to the tenor of the Bill. —
5th To pay it when it becomes due upon presentation.

But to this general rule is an exception
as against the Payee, when he expressly agrees
to assume the debts. —

In all places other Bills, or not drawn for Money, really due, but for the purpose of raising Money.

A subsequent "bona fide" holder knowing nothing of this situation, is not affected by it. There is sufficient exist as between the original Parties only, i.e. Drawer and Payee.

Upon failure of any of these implied stipulations, the Drawer will be immediately liable tho' the Bill has not yet become due, &c &c &c - Was the Drawer but an Infant who can't be capable of accepting - When liable at all he is liable for the amount of the Bill and sometimes as the case may be for the costs and interest.

And it makes no difference whether the Bill was drawn on his own account or on that of another.

The obligation thus incurred by the Drawer is irrevocable, nor can it be discharged by any third Person, even by a sovereign Power. Thus where a Bill was drawn by an Englishman, or a Subject in France which before the time of payment became unlawful to be paid by a Decree of the national Convention yet the Drawer was held liable.

But tho' the obligation is irrevocable yet the benefit of it may be lost by the neglect of the holder himself.

3 Decr 1757

1st Feb 1757

7 Decr 1756

1st Mar 1756

July 1756

1st Aug 1756

1st Sept 1756

1st Oct 1756

1st Nov 1756

1st Decr 1756

1st Jan 1757

1st Feb 1757

1st Mar 1757

1st Apr 1757

1st May 1757

1st June 1757

1st July 1757

1st Aug 1757

1st Sept 1757

1st Oct 1757

1st Nov 1757

1st Decr 1757

1st Jan 1758

1st Feb 1758

1st Mar 1758

1st Apr 1758

1st May 1758

1st June 1758

1st July 1758

1st Aug 1758

1st Sept 1758

1st Oct 1758

1st Nov 1758

1st Decr 1758

1st Jan 1759

1st Feb 1759

1st Mar 1759

1st Apr 1759

1st May 1759

1st June 1759

1st July 1759

1st Aug 1759

1st Sept 1759

1st Oct 1759

1st Nov 1759

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1st Jan 1760

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1st Mar 1760

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1st May 1760

1st June 1760

1st July 1760

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1st Nov 1760

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1st June 1761

1st July 1761

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1st Oct 1761

1st Nov 1761

1st Decr 1761

1st Jan 1762

1st Feb 1762

1st Mar 1762

1st Apr 1762

1st May 1762

1st June 1762

1st July 1762

1st Aug 1762

1st Sept 1762

1st Oct 1762

1st Nov 1762

1st Decr 1762

1st Jan 1763

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1st May 1763

1st June 1763

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1st Apr 1766

1st May 1766

1st June 1766

1st July 1766

1st Aug 1766

1st Sept 1766

1st Oct 1766

1st Nov 1766

1st Decr 1766

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1st Mar 1770

1st Apr 1770

1st May 1770

1st June 1770

1st July 1770

1st Aug 1770

1st Sept 1770

1st Oct 1770

1st Nov 1770

1st Decr 1770

1st Jan 1771

1st Feb 1771

1st Mar 1771

1st Apr 1771

1st May 1771

1st June 1771

1st July 1771

1st Aug 1771

1st Sept 1771

1st Oct 1771

1st Nov 1771

1st Decr 1771

1st Jan 1772

1st Feb 1772

1st Mar 1772

1st Apr 1772

1st May 1772

1st June 1772

1st July 1772

1st Aug 1772

1st Sept 1772

1st Oct 1772

1st Nov 1772

1st Decr 1772

1st Jan 1773

1st Feb 1773

1st Mar 1773

1st Apr 1773

1st May 1773

1st June 1773

1st July 1773

1st Aug 1773

1st Sept 1773

1st Oct 1773

1st Nov 1773

1st Decr 1773

1st Jan 1774

1st Feb 1774

1st Mar 1774

1st Apr 1774

1st May 1774

1st June 1774

1st July 1774

1st Aug 1774

1st Sept 1774

1st Oct 1774

1st Nov 1774

1st Decr 1774

1st Jan 1775

1st Feb 1775

1st Mar 1775

1st Apr 1775

1st May 1775

1st June 1775

1st July 1775

1st Aug 1775

1st Sept 1775

1st Oct 1775

1st Nov 1775

1st Decr 1775

Presentments

It is in some Cases necessary
say, and in all Cases sufficient, for the holder
having received the Bill before it is accepted,
to present it to the Drawee for payment —

When the Bill is payable at a limited
time after sight, presentment is necessary.
C. Bk 668 tho' this can't be considered as a presentment for
S. 117 payment for the presentment is deemed to
be at C. 67, the time of payment, which time of payment
C. 82, 262 can never arrive unless the Bill be pre-
sented for acceptance.

But in all other Cases it is necessary
Bk 268 to present the Bill if it comes due tho' it would
1532f^s 712 be admissible for he receives Credit of the
5 Dec 2670 bill he receives Credit of the
2 Shewer 490^r Bill he accepts, and if refused his remedy
S. 118^r Consig^r is accelerated, for he may recover before the
Bill becomes due.

S. 116^r Here it would otherwise be sufficient
to present the omission may be excused by
showing that the Drawee has no good or
2 Shewer 335^r effects of the Drawee in his hands and was not
D. 569 indebted to him. So also such omission is
S. 119^r excusable if the Drawee is insolvent and that
D. 436^r fact was known to the Drawee or to any other
Shewer 68, 109^r Party holding the Bill at the time the Bill
132, 202-3 was made or endorsed

The reason is that the Drawee or Indorser in such a case could not be injured by non-presentation.

And it is a gen^r rule that omission of presentation for acceptance is excused if it is shown by any fact which shows that the Drawee or Indorser could not be injured by such omission.

At worst time of presentation the gen^r rule is that the holder is bound to use due diligence, i.e., is bound to present for acceptance within a reasonable time. 256 Bk 569
75 Rep 445
Thys - 117
102 Rep 167 519

Mr. Chitty says the same rule applies to Bills payable at sight. But Mr. Gould thinks Chitty is certainly mistaken, as he and others in another place say that no presentation is necessary when a Bill is payable at sight. A Bill payable at sight must be presented for payment (not acceptance) within a reasonable time. Chitty. 68

A Bill payable "after sight" must be presented for acceptance within a reasonable time.

It is a rule that what is a reasonable time is a question to be decided by the Courts and not by the jury in order that it may be more uniform. For one jury may consider a day a reasonable time, another a week &c. Whether it is a reasonable time in any particular case before the full answer is given to the question.

15 Rep^s 167
12 Rep^s 519
45 Rep^s 148
75 Rep^s 425
Chitty 137
D 146 153
D o 103
Thys. 412
D o 127
Bowes. 249
Daug. 515
256 Bk 569

It is a rule also that the remittance should
by d^r 125^r be made within the usual hours of business
fully 6^r, and what are the usual hours and what not
D^r. p^r 148^r is to be decided by the usage of the place
where the remittance is made.

It is a neglect to present the Bill within the
proper time may be excused by illness, in-
vitable accidents &c. - It is said that the
Drawer ought to accept or refuse immediately
Mr Goode thinks this is not fair for it is
now almost the universal usage among
Ed Bay 281 Merchants to leave the Bill 24 hours with
Post office 17. The Drawer in order that he may ascertain
from the State of his account shall see it
situated with regard to the drawer. - If not
accepted within 24 hours it is considered as re-
fused, of course and no refusal is necessary.

By d^r 126^r
July 702^r It is said if the Drawer is to be informed
whether the Drawee accepts or not and this
consists^r too big a mail and the bill goes out within
5 -- 6, 24 hours he must accept immediately.

?
It is a rule that if the Drawee is not to
pay before he finds in the place of residence detailed
D^r 143^r in the Bill or if he never resided there or if
162^r 510^r he has absconded the holder is not obliged to
Drawer p^r pay the drawer where he does reside. But the law
D^r 4-6. 206^r says
By d^r 125^r immediately paid the Bill is honored.

Yet still if it be discovered that the Drawee
has resided in such place Detained in the
Wild, and what he is removed. Prosecution
should be made at the place to which he ^{Aug 1087}
has removed. - and if possible to the Drawee ^{Epist 511}
Personally unless he has left the Kingdom. - ^{Bailey 687}
or in the Country. Perhaps if he has left the ^{Chitty 70 1356}
Place. as to the latter the Political Connection
is so close that it wills of a doubt.

If the Drawee be dead ^{Posth 146}
Should be made to his representatives if he
can be found within a reasonable distance. ^{Chitty 70 1}
^{Posth 132-6}
^{Drawn abode}

Acceptance.

The acceptance of a Bill ^{Chitty 75 200}
of Exchange is an engagement to Compel ^{Beaufort 87}
with the intent or bader contained in it ^{Epist Rep 118}
that a Bill as has been issued may be ac-
cepted by an agent as well as by the Drawee
himself. but there an offer is made by an ^{Beaufort 87}
agent to accept. Such agent should always ^{Epist Rep 118}
produce satisfactory evidence of his authority ^{D 2069}
to accept otherwise the holder is not bound ^{Chitty 23}
to present it. and indeed it is doubtful whether ^{D 2 712}
or in any cases the holder is even obliged
to receive the acceptance of the agent of
the Drawee. There has however been no pro-
hibited decision on this subject. Mr Gould
thinks it more reasonable he should not be obliged -

It has been remarked that if a Bill is drawn on two drawers and accepted by one
 Pow^r 1228 only the other is bound but if the Bill be
 Blk No 279 drawn on two persons not partners and it
 Pow^r 1229 is accepted by one the other is not bound and
 Chit^r 26.73 the Bill may be protested.
 D^r 1112
 Blk No 228

If the Drawee is found to be incapable
 Chit^r 63.71-2 of accepting as if he be an infant the Bill
 Blk No 270 may be considered as dishonored and protested.
 Pow^r 673 It may generally be laid down that what
 3. June 1639 sum amounts to the Credit of the individual in
 a leading case engagement of the Drawee may be considered as
 1. M^r 64 sufficient ground to disallow the Bill.
 3 East 6314.

A promise to accept in future operates
 subject as a present acceptance; the promise is
 revocable even if it be by parol.

A promise by the Drawee to accept a Bill
 Pow^r 571 to be made in future is binding, if such
 3. June 1639 promise has given credit to the Bill, and in
 1. East 98 promise has given credit to the Bill, and in
 1. M^r 64 bind any Person to accept it for this third
 Chit^r 715.611 Person it is intended the additional credits,
 Pow^r 74.81 to accept the Bill. But it would not be an act
 (Blanks 484560) between the drawer and drawee.

The acceptance after the day 5, May, next will bind the Drawee who the Drawer
 Pow^r 44.10 and Endorser will be discharged unless they
 Chit^r 73.4 are satisfied of non-suitance of unpayment at
 D^r 81 the time it became due.

And when a Bill is accepted after the day of payment it becomes a Bill payable on demand.

To May 3d 4.
Do. 4. 574
Sath 127 - 7.
Gardiner 15.
12. M. 107, 410.
Corn 2d Oct. 75.

Under the English Bankrupt-

Law the Drawee is not safe in accepting a Bill after he knows of the Drawee's having become a bankrupt. But if he accepts before notice of the bankruptcy of the Drawee he is afterwards safe in paying the Bill, so he knows of the bankruptcy.

To May 3d 4.
7. Feb. 711
Portman 90
Chilly 74152

Acceptance of three kinds, Absolute, Conditional, and Particular

It should perhaps be premised that if the Drawee refuse an Absolute acceptance the Chilly 23-74 holder may consider the Bill as dishonored. D. 43, 180.

But if the holder declines a Conditional acceptance or a Particular one it may be so accepted but he must in such case date the Aug. 214
notice of the nature of his acceptance to the Do. 648
Drawee or Indorser. "Becus." they are discharged 115d, 1194
for whom any of the implied engagements are Do. 1212
not completed with the Drawee must have Corn 452
reasonable notice of it. 23d of Nov. 9
15d Rep. 182

What amounts to an acceptance is always a 15d Rep. 182
question of Law. D. m. 180

1st It is an Absolute acceptance which Chy. 74
is an engagement to pay the Bill according to its tenor. Chilly 75.

Acceptances are usually made orally in writing, tho' it is not indeed ~~and especially~~
ought ~~that~~ that they should be in writing. —

As to the form of the acceptance the usual mode is to write on the Bill the ~~date~~ 73-B. word "accepted," and signing the acceptor's name. — Sometimes the date is omitted and sometimes the word "accepted" is omitted and the name only of the acceptor is written thereon.

Coz 410 And indeed any act by which the drawee ~~draws~~ ^{Bills do 270} evidences his intention or sufficient cause — the ~~date~~ 45 — mere indorsement of the day of the month ~~time~~ 16d! — ~~has been~~ ^{been} construed to be an acceptance on ~~exchange~~ 34

It was held in the time of Edw. 3rd —
Comr. 75 that if a Bill is pay able in a large City or
London 574 Town that it must be payable at a particular
Place or Place else the holder is not bound
to accept it in it.

Mar 74
Q. — 278
Aug. 848
Q. 1000
2. Nov. 9
3. Dec. 1574.
1 East. 103
4 East. 72
16 Sept 18 n.s.

Writing is not necessary to the validity of an acceptance a verbal acceptance is sufficient.

It is said a verbal acceptance without consideration is as obligatory as one made in writing or one with a consideration.

This rule of Gould & Hicks is correct as between the acceptor and holder. — But

But between the Drawee and the holder want
of Consideration may be avoided. —————— 3 Barr 1669
Chitty 77
D^r 282

There is said to be a promise to accept
as a Consideration, executed, and such a
Promise on a Consideration executory, the holder 77
however is said to be binding from the Co-
ginning, the latter only, if it induces some
that Person to take it. — W^m Gould
thinks this rule contemplates a promise
to accept in future made by the Drawee
to the Drawee, and not with his bill.

A Promise to accept obtained by Fraud
or misrepresentation will never bind. — 3 Barr 1669.
This rule of W^m Gould which requires a qual- Chitty 77
ification, for it is true only as to the parties
immediately engaged with the fraud and does
not operate against a "confid^e," holder.

An acceptance by Seller is obligatory. 8 Reg^c 648.
Chy d. 69.

An acceptance may be implied where
there is no express acceptance or engage-
ment. — But to constitute an acceptance Popham^s 17
by implication there must be done at the same time 75
or circumstance from which it may be D^r 282
presumed, that the holder considered it as
accepted.

It is said an acceptance may 15th 611
be implied from the Drawee's retaining the ^{the} Hoadw⁷⁸
Bill beyond the usual time. —————— P^opham 46
Chitty 78

It is laid down by M^r Bullen in his N^o 2
Bul. 8770 that any act of the Drawee which gives credit
Phy^d 80 to the Holder and induces the Holder not to protest
it is an acceptance. —

2nd The second kind of acceptance is cal-
led a "Conditional" acceptance which
is an engagement not to pay the Holder at
Phy^d 745 all counts, but upon some contingency.
Phy^d 103 It will be recollect'd that the Holder is not
Phy^d 180 obliged to receive this or any other kind
Phy^d 101 and a absolute acceptance. But if he does
receive it he must give notice to all those
persons to whom he intends in any
event to resort.

But tho' the Holder is never
2 Aug 1152 bound to accept a Conditional acceptance
P^o 1 - 1212 yet the Drawee is always bound by it if now
4777d^o 9th of the happening of the event let it be what it
12 Mod 447 Cooper 571 will.
1588 Ep 182

What which is in its inception, a
Aug 6 1212 Conditional acceptance, may, "ex post facto"
Mod 74 become absolute. —

A general acceptance is as binding as
a written one - but if the acceptance be in
writing the condition must also be in writing,
and not be in parole, for such a general Con-
dition will not avail the acceptor against
a subsequent Holder who was ignorant of
the

of the Parol Conditions; tho' between the im-
mediate Parties the Parol Conditions is good
for between these Parties it is merely a ^{Agree 1-23}
Contract. but after it is executed it is specially. ^{Dougl. 286}
^{Do. 2-96}
^{Ghilly. 81}

A Partial acceptance is an uncondi-
tional one varying, however from the tenor of
the Bill. - as when the Drawee agrees to pay ^{Aug. 2 214}
half of the amount or when he agrees to pay ^{Aug. 2 452}
it at a different time. ^{Do. 487}
^{11 Mod. 190.}
^{Aug. 2 1164}

If the holder intends not to discharge the ^{Portf. 47.}
prior Parties, he must give them due notice ^{Ghilly. 82}
of his Partial acceptance. ^{Do. 157.}

But if the holder upon a Conditional
or Partial acceptance gives notice generally ^{17 Rep. 182}
of non acceptance to the prior Parties he waives ^{Ghilly. 82-5}
the Partial acceptance. ^{Do. 157.}

Whether an acceptance is absolute, Con-
ditional, or Partial is always a question ^{17 Rep. 182.}
of Law. -

Obligation incurred when the Acceptor
by the act of acceptance. ^{Do. 164}

By an absolute acceptance the acceptor ^{Portf. 115-17}
is bound to accept according to the tenor of ^{Do. 164}
the Bill. - by a Partial or Conditional ac- ^{17 Rep. 174}
ceptance, he is bound according to the tenor
of the acceptance. ^{Do.}

Wilson 1878) the acceptance is binding in favour of
 3 Rep 183 a third person. tho' it was made without
 4 Rep 339 any consideration moving to the acceptance
 20th Dec 18 D. in 121 and tho' what was known to the third person.

27th M^r 622 Hence an acceptance by an Executor for the
 3 Wilson 1 Testator is an admission on his part of liability
 2 Aug 1260 2 June 1225 and will bind him personally as to the holder
 18 Rep 1st 487 tho' not as to the Deawee tho' he has no affect

1803 88 It the obligation incurred by the accept-
 1 Rep 47. tor is irrevocable. It can't be discharged ex-
 1 Rep 70. cept by waiver of the holder or by payment
 D. - 118 or release
 Chitty 83

If the acceptance be made in a foreign
 1 Aug 783 Country by the Laws of which it either is or is
 Chitty 59. inately or becomes invalid. it can't be enforced
 D. 6th 4 83 in another Country until the judgment is formed
 1803 1st by the Courts of government.

1 Rep 47. An acceptance may be waived or released
 1 Rep 14 336 without Deed or writing; this is different with
 D. 10th 247. regard to Instruments at Common Law.
 Chitty 83 1st

It has been held in a manuscript in
 Doug^s 236 "Dacrybaffi" that what is a legal affect to dis-
 chage is a question to be decided by the judge
 1 Rep 47. - This is clearly not Law. But it is held
 Chitty 84 that nothing but an express Consent of the
 1803 1st holder will amount to a discharge.

1803 1st It will release by the holder to the
 D. 10th 181 Deawee after the Bill is made last before

before it is accepted, does not discharge the acceptance afterwards made, for a release operates upon a right actually in existence.

*Ed Ray. 684
56 Oct 70.*

But an express agreement between the holder and acceptor, that the former would consider the acceptance at once had been decided as a waiver of acceptance.

*Dug. 9 230
D. 246*

Where the holder of a Bill had entered the acceptance in his Bill Book, and over against the acceptance, the words "its acceptance annulled," this was held to be an implied waiver.

Whether the holder taking a part of the money from the drawer and taking an acceptance from him on the back of the Bill amounting to a discharge of acceptance is a question which has been & now is likely to be decided, and which is doubtful in the opinion of some eminent men. - Mr Gould thinks that an act which operates in favour of the drawer can never discharge the acceptance, it is allowed to suppose it.

*Dug. 9 230
D. 246*

Mr Chitty says that the alteration of a partial into an absolute acceptance by the holder does not discharge the acceptance to the partial one. Mr Gould thinks that this is clearly not so -- the true rule appears to be

1837 Rep. 593

Bowers 222 holds that if the holder can alter the acceptance 48 Rep 336, ceases without the drawers consent and Chitty 83, afterwards restores it to its former state the holder 28 acceptor is then not discharged "because he is for it would not be his own act."

If this rule was not supported by authorities Mr Gould could doubt whether ever this was case. It has been decided that Peck 187, if the holder of a Bill, on being informed 18 Rep 178, by the acceptor, that the acceptance is a Bailey 403, forgery, and if he gives the acceptor the on a summons make oath that the acceptance is a forgery ^{*} and sue him. The acceptor shall be discharged whether it be a forgery or not.

Where the future Consignment of Goods to the acceptor and the prospect which he has of making a profit thereon, is the Consideration of accepting and if the holder agrees to take and actually does take the bill in his own hands that such was the Consideration the acceptor is discharged.

The Conditional or Partial acceptance is waived by the holder giving notice of, 15 Rep 182, non accep^tans generally to the drawer 28 May 1195 dies. It is also held that if the drawer by his acceptance makes the Bill payable at a particular place as at his Banker,

and the holder does not present at this place
and the acceptor in consequence thereof re-^{2 Aug 1195.}
ceived damage - such acceptor is discharged. ^{Nov 10. 1195.}

Non-acceptance.

Acceptance is necessary only in such case where
the Bill is payable at the sight. -

Where a Bill is payable at a limited time
after sight, presentation must be made within ^{15 Rep 2070.}
in a reasonable time. - But in all cases ^{11 M. 45.}
^{of non-acceptance}, notice must be given to ^{17 Rep 712.}
the prior parties within a reasonable time,
"since" they are discharged from all lia-
bility. -

It was formerly held, that the
prior parties were obliged to show that some ^{15 Rep 4069}
damage followed the commission of ^{30 Rep 180}
neglect and in consequence thereof "since" that ^{12 Shower 317}
they were not discharged. - The contrary is ^{11 M. 45.}
now the rule. - The presumption is that ^{20 Bk 619}
damage is always sustained, and the plaintiff ^{17 Rep 129.}
shows that damage has not been caused. - The
"onus probandi" lies on him.

And the holder may first prove that
the drawer has not been damaged, if he
can show that the draft had no goods or effects
in the hands of the drawee, from the date ^{33 Rep 239}
of the Bill to the time of payment. ^{15 Rep 405.}
^{D. - 712.}
^{20 Rep 713.}
^{20 Rep 610.}
^{18 Rep 333.}
^{17 Rep 129.}
^{14 Rep 662.}
^{32 D. 230.}

Book 7 record of this fact amounts no more
 than the opinion of all England than "Prima facie",
 28th Feb 1813, evidence. - See quo' Proced. page 274-5
 28th Feb 1813. The indorse of a Promissory Note, ac-
 1813 Rep 304th quainted at the time with the insolvency
 28th Feb 1813. of the maker, can't defend on the ground that
 1813 Rep 343. want of notice. - This is statuted
 1813 Rep 384th.

That the Indorse has effect in the
 hands of the Drawee if the Drawee has none
 1813 Rep 515. he (the Drawee) can't defend upon the
 ground of want of notice. -

A Debt due by the Drawee to the Drawee
 is considered as effects of the latter in the hands
 of the former. - Securities as Bills of
 Exchange, 1813 Rep 515. lodged by the Drawee with the Drawee, in the
 purpose of raising money, but upon which no
 money has ever been collected, will not be con-
 sidered as effects. -

7th Feby, 3459.
 Aug 497. That the Drawee has effects in the hands
 Russell & + of the Drawee at the time of drawing, and
 2d Aug 515. subsequent occurrence, will include the ne-
 1st Rep 408. cessity of notice in fact that he has sustained no damage
 28th Feb 1813. by such a course with the want of notice.
 1813 Rep 334th. This last rule holds as with the Indorse. "and
 362th 1813. it appears, that instant is" -

28th Feb 386th. It has been held, that the Drawee,
 28th Feb 387th. having informed the Drawee, that he could
 1813 Rep 382. not accept before presentation is made.

does not do away with the necessity of giving notice of non-acceptance. <sup>15 Rep. 495.
2 B.R. 285.
2 B.R. 650.
3 B.R. 1355.
Rep. 515.
131 to 60.</sup>

The holder neglects to give notice at his peril. <sup>Note 7.
Chit. 87-9.
2 B.R. 713.</sup>

If the Drawee or Indorser is a Bankrupt at the time of the refusal to accept by the Drawee, notice is unnecessary, and need not be given. — and the rule goes further for notice need not be given to the assignee of the Bankrupt. — Mr. Gould thinks that unreasonableness is bad and no reason at all assigned, is the Doctor. — The rule is however questioned in. <sup>Chit. 67, 89.
Brook. B.R. 78.
3 B.R. 671-9.</sup>

There is no need of giving notice if the Drawee or Indorser, at the time of non-acceptance has absconded. ^{Rep. Rep. 516.}

The neglect of giving reasonable notice is excused by the death or sickness of the holder, those are inevitable accidents. <sup>Fath. 76144
Chit. 89</sup> and the maxim is "actus non imminet faict injuriam." — But notice must be given as soon as convenient afterwards. —

Wh. if the Drawee has made a condition, all accepted if the terms are complied with by the holder there is no need of giving notice to the prior parties, because by complying once with the terms that acceptance becomes "ipso facto" absolute. ^{page 275}

This is an exception to the Genl. rule & is
intended to give the holder an opportunity
to accept or decline the offer. He must give them due notice of
the nature of such acceptance.

If the Deawee wishes to pay a part
of the amount of the Bill the proper man-
ager can count "Two Lants" without any
notice.

Mode of giving Notice.

Ms. B. 1. 1 v. 130-142
The manner of giving notice is differs
in the Case of a Foreign from that in
the Case of an Inland Bill. — In the latter
no particular manner is necessary.

This Protest is in general terms
made by a Slaveholder.

1 Shaver 184 The Act of a Legislature is received at the
Shaver 184 instance of any County Court, shall be read
Shaver 184 credit is always given to their official acts.
Shaver 184 Such acts not under any municipal regulation, but under the State
Shaver 184 Statutes and Laws.

The substance on which a Bill of Exchange
rests its propriety is as follows - It is with
the Bill that is presented, and acceptance, or -
dated.

refused it is called to the Notary Publicc.
and he in Person require the Decease to accept it. if he refuse shew the Notary Publicc
is not fit for his purpose and then
it is made a written declaration of such
refusal which declaration is called a Protest
Postscript 134
Hyd. 136.

The form of the Protest can now much
be according to the usage of the place where
the Protest is made. As to the English Form see
form Vide.

The voting of the Bill for non-payment
is out of relevance to the Protest. Aug^o 137.
Bills 743.
The act must be done by the Notary Pub-
lic himself and not by his agents. 4 Do. 175.
Bills 56071.
45 Rep^s. 175.
Aug^o 137.
Chanc^r. 61.

The gen'l rule is that the Protest must
be made by the N.P. It is oft' a rule that
when such officer can't be obtained the Bill ^{May 2 137}
may be protested by a substantial inhab- ^{Do - 143}
itant of the place in the presence of two or
more subscribing witnesses. ^{July 91-5}

The Protest is generally to be made at the place where the Bill was introduced. — *Chittagong*

A Copy of the Bill itself is to be placed in the Boxed Proofs. But a Copy of the Bill need not accompany the notice sent to the Printers.

Period. 80. To the Notice in Island Bills
 15 Ch. 131. upon nonacceptance of an Island Bill that
 32. 69. need not be a Protest to subject the same
 Edw. 932. need not be a Protest to subject the same
 Banker.

It has been said by Justice Robson
 15 Ch. 169. that to subject the Drawee the notice must
 Chitty 9378. contain a declaration of the holder not to
 depend on the Drawee. Mr Gould says
 this is unnecessary.

At Common Law on Island Bills could not
 Ch. 910. be protested. but by Stat^s 3 & 4. of Anne. a
 3rd. 150. protest is sufficient for the purpose of Sub.
 Chitty 934. setting the protest Banker to Costs interest
 and damages.

The necessity of Notice in an
 Edw. 150. Island Bill is precisely the same as in a
 Foreign. tho' the form is different.

Wedd. 579. The bill must be seasonably sent by
 Bernac 199. the Atm^t and this would be sufficient tho'
 Comber. an accident should prevent the notice reaching
 Duth. 48. the protest Banker.

Office no. 112. Papers to
 the place to which it is to be sent. It is also
 Wedd. 563. sufficient if it is sent by the first and direct
 carrier Conveyance.

A Receipt should be
 made within the reasonable time of business

and on the day on which acceptance was ren- 43 Chipp. 174
fused. This rule is sometimes relaxed - Ed. 3 James 443.
as when this is prevented by inevitable accidents. Baill. & P. 71
Chitty 95.
Dyer 162.
Prin. & P. 144.

With regard to the time of Notice and in
Foreign Bills of Exchange being made -

This must be given within a reasonable
time.

Notice of non-acceptance must
be given by the first Bank or necessary Convey,
and after refusal to accept and Rejection
Conveyance it however not included in this
rule -

and if the Party desire in the
place at which accepted it would not
need notice before being given on that day,

It was once held that the Notice ac-
quired no force before the Banker had
the honor of the Bill must be given
by the holder himself. This case was
decided by Lord Mansfield.

Ed. Henryow Chitty 98st
has since decided that a Notice given be-
fore the Drawee is sufficient though that was
however a case at N. C. & S. Bank.

"Mr Gould" thinks that in future that
last rule will be considered as law -
but further than this Mr Gould goes over the
rule ought not to be relaxed.

Notice given by one party who has a right of action at the Bill's date on or before Bailey 83 the other parties who have a claim upon Chitty 982 shall standing before them (e.g.) A holder of the Bill gives notice to B the Drawee if non-acceptance this notice comes to C the Endorser this no notice he actually given by him.

When Notice is necessary to be given
Sect 2570 at all it must be given to all for whom
Rec'd 712, less so whom the holder intends to resort
Rec'd 45, for payment. No money can be had a-
gainst any party to whom notice has not
been given.

It has been said that when the
Holder 712 Drawee need not be given notice
Rec'd 202 but this does not affect the Endorser for
D. - D. 133 notes notwithstanding this Notice must be given
Bailey 175, to the Endorser if the holder intends to resort
to him.

If a formula holder ^{has} for the pur-
pose ^{of} giving notice of acceptance and the non-acceptance
Debtors 569 must be given to the Drawee. This is well
Established Clearly not Law.
Rec'd 4434

The consequences of the holder
Rec'd 57 not giving Notice may be waived by matter
389 9340 "as best facts." That of the Drawee for any
Rec'd 713 part of the amount of the Bill. It is waived
34 5724 (Rec'd 202).

Is also a promise by the Drawee or
Indorser of a dishonored Bill binds the Party Authorities
who no notice has been given for it is Con-
sidered as a waiver of the want of acceptance.

But if the Drawee or Indorser makes
a promise to pay a dishonored Bill igno- ^{Former Rule}
rant at the time of its being dishonored he ^{5 Bain 2670.}
is not bound. - This was deemed Law for ^{15 Rep 471D}
surely but in a late Case it was decided ^{2 Law Rule}
that he is bound. - Because his promise im- ^{7 East 231.}
plies an admission that due notice was ^{Do. 236.}
given. - in other words the Drawee or Indorser ^{notes.}
is not allowed to even a want of Consideration ^{18th Rep 334.}
^{2 East 489.} ^{15 Rep 2330.}

It has been held by Dr. French that -
if the Party promising to pay a dishonored ^{Catty 152}
Bill is not aware of the legal effect of the C. D. - ^{D. & P. B. Act}
Lodger neglect. He shall not be bound by ¹⁵⁸
such promise. -

And in the same Case it
was decided that if the Drawee had paid the
amount of the Bill to the holder of it he
might recover the money back by an ac-
tion of "Indictatus Appumpsis". - -

"W. Gould" does not think that ig-
norance of the Law ought to excuse any
Party and that is he says the rule Case in
which a decision was contrary to the maxim
"ignorantia juris non excusat".

Vol 8.

Acceptance "Supra Protest."

There is an acceptance different from any yet mentioned, "viz." an acceptance "Supra Protest," which is an absolute acceptance Chitty 232 tho' under different circumstances, and D. L. 103 applies to Foreign Bills only.

Hyp. 152 Where a Foreign Bill is protested for Draw. 334 was unaccepted. It may be accepted. See Chitty 132 "Supra Protest." D. L. 103-80309.

Thus the Drawee himself may accept "Supra Protest" for the honor of the Drawee or any Third order.

This is the most usual method when a Bill is drawn on a third person and Hyp. 152 the Drawee is unwilling to accept on the Drawers account of such third person not willing Rec. Cont. 39 to accept for the honor of the Drawee or 152 Rep. 269 Third order. in this case he may get it Chitty 103. protested for non-acceptance. and then Chitty 334 accept "Supra Protest."

The effect of an acceptance "Supra Protest" is to give the acceptor a right of recovery 458. security against all the parties liable to him 152 Rep. 269. for whose honor it was made and against Drawee also.

Hyp. 103 If the Drawee refuse to accept in Chitty 127. any way, any third party may accept "Supra Protest" Chitty 104. D. L. 870-9.

In acceptance for the honor of the Bill is thy^o - 153.
the same as an acceptance for the honor of the Dower Chitty. 104

The Bill already accepted "Subsidy & Petition" Chitty 104
by a stranger may afterward be accepted by another
below Stated ad thos' it must be for the honor of a
different Party. Bages 40

It was formerly helden that the
holder was bound to receive an acceptance "Subsidy & Petition"^{12 Mod. 410.}
"by a stranger." thos' notwithstanding is not Law ^{Thos. 155.}
and the holder is not obliged to receive an ad ^{Chitty. 104.}
ception "Subsidy & Petition" from any stranger ^{Bages 2736.}
whatever.

And if after accepted "Subsidy & Petition"^{Bages 452}
"by a stranger" made by a stranger the Dower ^{Thos. 154.}
should be willing to accept he may do it pro-
vided the holder agrees to it.

And whenever the acceptance "Subsidy & Petition"
is received for the honor of a different Party. The Chitty. 105.
Holder must protest the Bill before Stated
acceptance is made. I apprehend this can apply only to
case of two Bills given to one party & one
of them is rejected.

Mode of accepting Subsidy & Petition.

The person who accepts "Subsidy & Petition" must
appear before a Notary Public^{with witnesses}, and when ^{Thos. 153.}
declare that he accepts the Bill and what he ^{Chitty. 105.}
will pray it when due, and then sign his name
on the Bill thus "Accepted for the honor of
the B."

to accept the "Sup' Work" in our car
and obligations and acquires certain rights
which will now be considered -

Brewer, 1838 His Obligations are undisturbed
Dec 4th. Suprae Document - is as binding upon the
Editor 575, ^{as} upon the author as if he never had been a Pro-
fessor 410, ^{and} such time as if he never had been a Profes-
sor 760 test - The only difference is that it is for
some 16th, the honor of a particular Treaty -
Dec 1874

Feb. 153 The Bill thus accepted is for the
Power, 457, Loan of the Drawer, or which is the same
13th & 20th 113, being 54, the Bill, the acceptance is made with all
Gilding, 103, which are Subsequent to the Drawer.

July 2, 1853 The Bill be accepted as follows & after
Power 487. Section 1. and the following is liable to all
of Secy 113
Chapt. 108. the Auditor subject to him.

His Rights. Such an author has
a claim of indemnity against the party for whose
honour he accepts, and against all the parties
who assented to him, for those honours he accepts.
Exhibit 13 As to the prior parties an acceptance
"Supra Protest" stands in the place of the
Person for whose honour he accepts. —

Secd. 891 It follows then that if the Bill is accepted
by 3. 155 & is honor of the Drawee. he can have no
Power 44^o right of indemnity against any other than the
Drawee.

Transfer of Bills.

If he has given an order, obsecved that Bill may be sent to him or to another, to whom his agent or to him or bearer, are negotiable.

All Bills which are negotiable are negotiable "ad extinctionem." This rule applies also to Hawley Check & Bankers, But (Banks) bills to bearer were formerly not so far as could otherwise be known, the same rule holds at least fictitious payees.

Payd. 635.
18 May 211
28 Aug 467.
5 June 1547
Do. " 1527.
3 August 211
July 125
28 Aug 180
30 Sept 481
1 Oct 569

A Bill not containing words of Recourse is not negotiable except if it is indorsed the Indorser may recover against the Indorsee as upon a Negotiable instrument. But not against a party not immediately concerned as the Drawee, soon the indorser Covenant to

Sept. 125
27 Sept 133.
18 June 411
21 Feb 303
28 Dec 442
1 Oct 117
3 June 1223.

Whether a Bill or other Instrument is negotiable or not is a question of Law. Mr. Chitty says there is an exception in new cases where the law is not known. Mr. Gould thinks Chitty is incorrect.

28 Aug 1216
18 Dec 295
Chitty 109
Double 153
Halsbury's Part 1
253 to 257

In open, a valid transfer can only be made by the Payee or other person having the legal interest in the Bill; i.e. it is binding between the two persons and the transferee.

Chitty 1212.

Where a Bill is payable to him or another to him or bearer, the rule is the same if the person to whom it is transferred knows that the person whom it is transferred has no right to do.

But if such Bill to it is made be endorsed
 1 Decr 452 in blank whereby it becomes transferable by
 3 Aug 1510 delivery and if it be delivered to a person not
 18 Oct 458 knowing of the incapacity of the person who de-
 7 Decr 427 livered it to the transferor such person may recover
 12 Aug 4611 damages 1333 for its non transfer. Such person may recover
 2 Decr 7381 it is the same with a Bill to payable to A.
 6 Nov 457 100
 12 Decr 201-209 or C.
 17 Feb 462 or C.
 2 Aug 4516)

If a person whose living prayer or
 3 Nov 453 holder marries her husband begins all
 10 Nov 460 his rights to transfer. —

25 Oct 335 If the Dower or holder becomes a Bank-
 7 Feb 107 er with the right of transferred vests in his affiance
 2 Decr 469.

It has been decided however that if the
 Dower or rightfull owner of the Bill having
 before bankruptcy delivered the Bill to another
 2 Decr 460 without endorsing she may after bankruptcy,
 endorse such Bill. The Court of Justice
 will sustain it and a recovery may be had
 thro' the medium of his indorsements. —

3 Nov 451 On the Death of the holder of a Bill the
 28 Feb 450 legal right of transfer vests in his posthu-
 2 Decr 425 mous representatives.

17 Oct 432
 15 Dec 487
 18 May 111-42

If a Bill is made and transferred to
 6 July 489 less or more than interest on eight months
 2 Decr 453 for it is null & void. but the act it trans-
 fers 1062 can may be carried into effect by one only
 for additional sum of 100. —

If a Bill be payable to A to the use
of B, the right of transfer is in A only,
for A has the legal title, and the action
always follows the legal title.

I have taught Mr Gould - already ob-
served that in that case if A brings an
action against the Bill against the
Drawer, the Dft may set off a debt due
from B, and I have observed that I thought
this was not so, since which I have seen *Thos 167-8*
in *Thos d* that it is not considered as law
generally.

As to the time when a Bill of
Exchange is transferred, it is usually after
acceptance and before payment -

A transfer may, however be made be-
fore the Bill itself is completed. Thus if A *Dougl 490*
indorses a Blank Bill and delivers it *Thos d - 89*
to B, B may write a Bill of Exchange on *1863 3 13*
the indorser and A after it is drawn, be *Dougl 316*
comes the Indorser.

An valid indorsement can be made
after the time of payment -

A transfer made after the time of
payment affords ground for suspension, and
the holder takes it in genl. subject to all
the equity which existed between the former
parties at the time of such equity - and *Thos d 283*
Thos d 575

Thos d 509
Cath 5

Vert 307

Thos d 264

Thos 167-8

Thos d 185

Thos d 112-13

Dougl 490

Thos d 514

Thos d - 89

1863 3 13

Dougl 316

Thos d - 319

Thos d 70

Thos d 103

Thos d 430

Thos d 1516

Thos d 80

Thos d 1810

Thos d 423

Thos d 280

Thos d 83

Thos d 283

Thos d 575

and indeed it is doubtful whether he is
entitled to such equity, if he has or not.

But the party who transfers the Bill
after it becomes due cannot avail himself
of any ground of Superiority or any equity be-
tween the former parties as against the Sub-
sequent "Good fide," - hold or third person
because the transfer was his own act.

And all you can do is to sue him in the
same action immediately transferred.

It is said that an Indorsement after a
Bill is paid does not bind any party ex-
cept the endorsee. - But that it must be
understood, after the time of payment,
has elapsed. - Scott, it would certainly
bind all the prior parties, at which a
payment was made previous to the day
of payment.

2 Harg 202
2 Day 360
Cochr 4.00
12 Reg 213
1 Sack 65

But if a Bill is partly paid
and only partly paid, what furnishes no ob-
jection as to the residue.

The mode of transforming a Bill
is governed by the legal operation of the in-
strument in all cases, and not of the
sense of its.

There are two modes of transacting one leg,
Indorsement & the other by tradition or mem-
orial delivery. — There are some Cases
in which a Bill can be transferred by In-
dorsement only. —

A Bill may be given to A
or bearer to ~~be~~ an order, if indorsed in
blank may be transferred by Indorsement
out & Delivery. Every Bill is transferable
by Indorsement.

But a Bill payable to Mr or
Mister, or Mr & Sons, or to order of the Recd
or is not transferable in the first place
and by Indorsement.

A Bill to Mr or Misters
order if it is indorsed in blank by the Payee
becomes transferable by delivery.

No formal words are necessary in the
creation of a Bill of Exchange on the Con-
tract to a valid indorsement. It is suf-
ficient that the Transferee name be written on
the Bill.

It is not to be understood however
that every memorandum will be a sufficient
indorsement.

Indorsements are according to the
legal definition of them of the word Indorse
in blank, in full or restrictive Indorsements.

B. May 14 1822
Holt 115
Aug 16 11
Aug 12 1833
P. H. 225
Sept 180
Oct 10
Jan 15 22
Feb 5 557
Sept 15 18
R. R. 485

Nov 87
Mar 600
July 88-9
Dec 1833

Feb 168
Aug 1103
Nov 811
Oct 126
Dec 138 30
Aug 243

Aug 577

This distribution of them is not indeed very logical, for there are probably two only, (in) Blank - and in full - as restricted endorsement is a species of which endorse-
ment in full is the genus.

Thy d. 99 1st The Endorsement in Blank - is by
Chitty, 117 merely by writing the Endorser's name on
the Bill.

Sack 12830
18th d. 136

12th d. 160 does not "Operate" to transfer the interest in
244 the Bill. It only gives power to the holder
2d Ray 403 to constitute himself the assignee, by filling
Aug 1103 up the Blank.

2. 56. 117.
Com. 24311
Ms. 42275

The holder if he brings
an action on the Bill may file up the
Bill at the time of trial, and it may,
be done at any time before it is delivered to
the payee. But no recovery can be had
unless the Bill is filled up. When it is filled up a
2d Ray 871 Blank Endorsement has a retroactive op-
18th d. 163 ration.

Sack 125

The holder may file up the
Blank with an Assignment to himself or
with a power of attorney to himself, and
then he is only as an agent for the endorser.

Sack 12830
2d Ray 871

12th d. 163

244

2d Ray 125

Aug 1103

Atte 9

It follows from that rule that where the
Endorsement appears in Blank as Actor
may be brought in the name of the Blank Endorser.

After a Bill has been regularly indorsed in Bank it can afterward be restricted in its subsequent negotiability by a subsequent Endorsement - although as it continues in Bank.

Holt 296
Hyd. 305-6
Bish. Rep. 1812
D. 210.
Pis. Rep. 2235
Philly 118-19
D. 120188-201.

If the Bank indorsement is filled up to the holder, and he indorses it restrictively then its negotiability is destroyed.

Bailey 158
Bank Reports.
Days. Edit 1822
rule. D

Against if the Payer makes an Indorsement in full the Indorsee may beg Indorsement in Bank under the Bill negotiable by mere delivery.

Philly 118-19
Dong. 617.
D. 620-639

But a Bill payable to Order is non-negotiable & is never negotiable by mere delivery even if it is indorsed in Bank by the payee; however, Days. 811
D. 620-639.

2nd Art. Indorsement in Full is one expressing how long the indorsement is to be made. Such an Indorsement covers in itself an assignment of the interest of the Bill both transferred.

D. 23, 24
Chitay. 118
Hyd. 89.

An Indorsement in full can only be transferred by the Indorsee Indorsement.

Bailey 158
Bish. Rep. 1822
Days. D

The negotiability of a Bill originally negotiable can't be restrained except by a just words of restriction.

Com. Rep. 311
1831 Rep. 295
2 Jan 1836
Aug. 537
Days. 617-37

If the Bill is endorsed in Bank.

and affeigned remains in Blanks, a Subsequent Lessor can restrain its negotiability if that endorsement transfers the interest.⁶

3rd A Restrictive Endorsement is

Dated 9th 1833 and endorsement is full, but containing
2nd 2² 1837 words to restrain the negotiability
of the Bill, & affixed words to restrain the negotiability
of the Bill, & affixed words to restrain the negotiability
of the Bill.

The payee which he remains
1st 1833 2⁴ 1837 the holder may count the payment by any
2nd 1833 2⁴ 1837 particular person, and shall say its due
2nd 1833 2⁴ 1837 But I decline on principle of the instrument Restrictive
4th 1833 2⁴ 1837 Dated 11th January transfer the whole thereof without my consent.

It is said that a valid transfer
3rd May 1833 can be made after acceptance except 1st 1833
4th February 1833 the whole amount of the Bill. "So it is," the
1st 1833 2¹³ 1833 acceptor would be subjected to more than the
3rd 1833 6th 1833 amount of the Bill.

Mr. Gould's affidavit is that this
rule is laid down too generally where there
be no reason why such transfer should
not be rated as to the endorser. The only
reason given for the above rule is that thereby
the acceptor might be subjected to more
than one action. But this reason does not
apply in this case. — Mr. Gryd has laid
3rd 1833 10th 1833 down the rule at all general demands of
negligence to do

If a Bill is indorsed in blank only,

before acceptance the acceptor is liable for damages
till he engages to pay it as indorsed and fully paid,
does it knowingly consequently be out of
ject to its ^{to} _{to}

Show what rules it may be in
ferred that the Drawee himself can never
be subjected by a transfer except only of the ^{when D 62}
sum - except when the endorsement is made ^{when D 63}
before the Bill is drawn which may be done ^{Ed Ray 360}
tho' it is not usual. There is no doubt ^{when 400}
that what after the part of the Bill is paid
an endorsement of the residue will subject
prior parties.

To complete a transfer by ^{when 41}
indorsement the Bill must be delivered. ^{when D 115. 121}

As to the operation of a Transfer.

The transfer of a Bill by Indorsement is ^{when 478}
in legal effect the making of a new Bill ^{D 133}
and the Endorser is considered as almost w- ^{when 674}
ay respect as a new Drawer on the original ^{when 444}
Drawer.

Hence it is said what a Note ^{when 10th}
Promissory Note when indorsed may be ^{when 149}
extorted upon a Bill of Exchange. ^{when 676. 29}
after a Promissory Note is indorsed it ^{when 676}
changes the nature of a Bill of Exchange. ^{Ed Ray 743}
^{when 132. 3}

Hence all the obligations to which it is

July 17th 1824.

Drawer is subject to payment of the Bill and
is in law the same as that by which by
the making of the Bill the Drawer is sub-
ject to payment of the Payee.

The obligation of the drawer to the pay-
ee may in law be discharged in the
same way in which the obligation of the
Drawer of a Bill may be discharged. And

It may be said that a drawer by
order of 14th Feb 1824 delivers for an unexecuted debt or for £
5. May 9th 1828 valuable consideration according to the terms
12th March 1824 D^o in 408 subject the Party transferring to a third
D^o 5th April 1828 obligation to which the drawer is to the
6th Sept 1828 to be subject to which the drawer is to the
the Payee and the drawer becomes indorsee
Note II. There are two exceptions to this rule

1st If it is expressly agreed between the
7th Sept 1828 Party transferring and receiving that the latter
8th Oct 11 1821 shall take it at his own risk and in full
9th Dec 1820 discharge of the debt.
10th Oct 1824

But if it is not thus
agreed and the acceptor fails to pay the
11th Nov 1828 signee may recover against the signor
12th Dec 1828 the consideration of the transfer but not on
13th Jan 1829 the Bill itself because the Bill was never
14th Feb 1828 issued by, nor delivered, and the Party's name
15th Mar 1828 not on the Bill and therefore he cannot be
sued as a Party to the Bill.

But in this last Case no action will lie ^{Ed Ray 328}
against the Party delivering in favour of any ^{3 Bla 4525}
one except the Person to whom it was im- ^{Courts 270}
mediately delivered. Because he is not a Party to the Bill ^{Ex Diz 61}
^{1 Shand 130}

N.B. The last authority may seem to contradict ^{3 Bla Rep 174+}
the rule but it does not for it is a Case "lue gerant"

Q² Where the transfer is by way of Sale or ^{3 Bla Rep 157}
by way of discount Cashier is considered as a ^{1 Bla Rep 447}
transfer by way of Sale, the Party bears ^{3 Bla 90-1}
such a burden, no obligation for him is incurred
unless & whilst the action can be maintained & he takes the risk

But the payment is discharged by the ^{Willow 40}
Agreement of the whole by any other Party. ^{1 Bla Rep 89}

But the Payment of the Bill by one of
the Parties does discharge the other Parties ^{Willib 1235}
yet delivery of one in Execution does not ^{4 Bla Rep 825}
discharge the other Parties until the par- ^{2 Shand 481}
ty first named is secured after being in- ^{Ed Ray 590}
duced thereto as before it is discharged ^{Sallo 574}
yet it does not discharge the other Parties page 149-50.
It differs from joint Debt at Com. Law
the Capital of each is separable.

Rights which may be acquired and
Obligations which may be incurred
by Transfer.

If the holder of a Bill
transfers it by delivery, loses it and if ^{Stair 120}
afterwards it comes into the hands of a ^{3 Bla Rep 71}
"Conscript" ^{that is ignorant} of its having

Bill 452^d given back and before it is due he shall
 3D^e 1516 have the legal interest in it - for it is a
 70 Rec^f 427 instrument of Law & that when one of two inno-
 Ed Reg^g 738 Cent Persons must suffer that he who was
 Dated 011 Oct^h 1711 the instrumental cause of the others loss
 4 Dⁱ 633 being shall be the sufferer so it is stolen -
 25 Rep^j 70^k the Bill is belied
 the judgment is
 and the lesser the
 interest in the
 lesser another
 or lesser cause
 can be
 done.

This rule makes it necessary for the
 holder to recover on this Bill that he
 should have recd it before it is due, for
 if after the Bill is due, and he obtained
 45 Rep^s 28 before it goes round for payment and he
 PD^t 607 ought to enquire at both the Drawee's right
 both the Bill and tho' the holder has not
 given a consideration for the Bill if the
 Drawee upon demand made pay the Bill
 he shall not be compelled to pay it over again

16 Rep^u 40 And in case of a lost Bill paid out
 PD^v 1511 of a regular course of business he may be
 Chitty 125^w compelled to pay it over again

If a Bill transferable by indorsement
 only be transferred by forged indorsement
 25 Rep^x 28 the Indorsee acquires no interest in the Bill
 Dated 017^y and therefore if the Drawee pays the Bill
 Dated 037^z to such Indorsee he may be compelled to
 15 Rep^o 67^{aa} pay it over again for he ought to be con-
 page 209-70 sidered to be the handwriting of the In-
 dorsee.

If the Drawee of a Foreign Bill with whom it is left takes it - or by any other account becomes entitled to its discharge the Bill & B. & P. 71
B. & P. 188.
he must give the holder his Rec-
iptory 1830. payable at the time the Bill
was payable. Or if he refuse to give it a
Protest may be made.

There is no such provision at Com. Chitty 127-8.
Law with respect to Subrogated Bills.

This is all case in which a Bill is
lost a Protest may be made on a Copy Chitty 89.
Provided a new Bill can't be obtained. L. D. 170. 1282

There is in the S. Afr. what is called a
Protest for Letter of Credit. It is said
if the Drawee absconds. a demand may be
made from a Letter of Credit Drafted Payee Ed. Ray. 743
B. & P. 2124. D. 26. 27. 29.
when therefore it is said that if such a com-
munity be refused the Bill may be protested it
is meant that the demand is after acceptance

The Credit Letter, when furnished is ex- Chitty. 129
ecuted by a third without engaging in the pay- Com. Chitty
ment of the Bill. - C. & G. 82

It is a general rule that the holder must
present the Bill at the time it is pay-
able if there is any place mentioned in the
Bill, and if there is none he must do it within
a.

July 581 a reasonable time, and a refusal of such
a sum as £1000 to do so would be in itself a sufficient
cause for the withdrawal of the franchise.
July 587 of presentation for day meet
Aug 587
Sept 587
Oct 587

Mr. B. 4.10
B. B. 470
B. B. 557
B. B. 581
B. B. 146
B. B. 155
B. B. 467 182
B. B. 146
B. B. 71
B. B. 2-6
B. B. 146

If the Deceased be dead Presentment must
be made to his Esq^r or Att^{ee} if he has any
if there be neither it must be made at the
House of the deceased.

It is said if the holder & his heirs
make a Will and appointed a Testator
wholly 132^o &c must present at the Probate庭 and the testator's
Will has not been proven for and unless
his authority from the Will and from the
procurator

Buksho' who prior to his may
Dwelling¹ 235² object upon the ground of a delay to join with
Dwelling² 244³ yet the Acceptation cannot neither can he make
Particular⁴ 26⁵ it a ground of Objection that indulgence be given to
Sons & Children⁶ 27⁷ any other person than
and of the 28⁸ 28⁹ 29¹⁰ 30¹¹ 31¹² 32¹³ 33¹⁴ 34¹⁵ 35¹⁶ 36¹⁷ 37¹⁸ 38¹⁹ 39²⁰ 40²¹ 41²² 42²³ 43²⁴ 44²⁵ 45²⁶ 46²⁷ 47²⁸ 48²⁹ 49³⁰ 50³¹ 51³² 52³³ 53³⁴ 54³⁵ 55³⁶ 56³⁷ 57³⁸ 58³⁹ 59⁴⁰ 60⁴¹ 61⁴² 62⁴³ 63⁴⁴ 64⁴⁵ 65⁴⁶ 66⁴⁷ 67⁴⁸ 68⁴⁹ 69⁵⁰ 70⁵¹ 71⁵² 72⁵³ 73⁵⁴ 74⁵⁵ 75⁵⁶ 76⁵⁷ 77⁵⁸ 78⁵⁹ 79⁶⁰ 80⁶¹ 81⁶² 82⁶³ 83⁶⁴ 84⁶⁵ 85⁶⁶ 86⁶⁷ 87⁶⁸ 88⁶⁹ 89⁷⁰ 90⁷¹ 91⁷² 92⁷³ 93⁷⁴ 94⁷⁵ 95⁷⁶ 96⁷⁷ 97⁷⁸ 98⁷⁹ 99⁸⁰ 100⁸¹ 101⁸² 102⁸³ 103⁸⁴ 104⁸⁵ 105⁸⁶ 106⁸⁷ 107⁸⁸ 108⁸⁹ 109⁹⁰ 110⁹¹ 111⁹² 112⁹³ 113⁹⁴ 114⁹⁵ 115⁹⁶ 116⁹⁷ 117⁹⁸ 118⁹⁹ 119¹⁰⁰ 120¹⁰¹ 121¹⁰² 122¹⁰³ 123¹⁰⁴ 124¹⁰⁵ 125¹⁰⁶ 126¹⁰⁷ 127¹⁰⁸ 128¹⁰⁹ 129¹¹⁰ 130¹¹¹ 131¹¹² 132¹¹³ 133¹¹⁴ 134¹¹⁵ 135¹¹⁶ 136¹¹⁷ 137¹¹⁸ 138¹¹⁹ 139¹²⁰ 140¹²¹ 141¹²² 142¹²³ 143¹²⁴ 144¹²⁵ 145¹²⁶ 146¹²⁷ 147¹²⁸ 148¹²⁹ 149¹³⁰ 150¹³¹ 151¹³² 152¹³³ 153¹³⁴ 154¹³⁵ 155¹³⁶ 156¹³⁷ 157¹³⁸ 158¹³⁹ 159¹⁴⁰ 160¹⁴¹ 161¹⁴² 162¹⁴³ 163¹⁴⁴ 164¹⁴⁵ 165¹⁴⁶ 166¹⁴⁷ 167¹⁴⁸ 168¹⁴⁹ 169¹⁵⁰ 170¹⁵¹ 171¹⁵² 172¹⁵³ 173¹⁵⁴ 174¹⁵⁵ 175¹⁵⁶ 176¹⁵⁷ 177¹⁵⁸ 178¹⁵⁹ 179¹⁶⁰ 180¹⁶¹ 181¹⁶² 182¹⁶³ 183¹⁶⁴ 184¹⁶⁵ 185¹⁶⁶ 186¹⁶⁷ 187¹⁶⁸ 188¹⁶⁹ 189¹⁷⁰ 190¹⁷¹ 191¹⁷² 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110. The auctioneers engage to pay attorney
or demand he may, & costs, deducted upon
the

the ground, that no prosecution shall be made and Mr Gould application be made ^{to Lower 235}
Chitty 134
in the former case also.

If no prosecution be made at the place where according to the acceptance ^{Sing 0 1195}
it may appear the Debtor may defend up ^{2d Ch 509}
on that ground. *Purina Pace* ^{an old Bailey 48}
tions Bill not by the holder may prove
that the Banker C at whose house the Bills
is supposed to be payable, had no effect on
his hands and then recover.

Presentation for payment is regularly
to be made by the holder or by his agent ^{1st Ch 115}
in a court and Mr Chitty says by an agent ^{10th Ch 2780}
by whom competent to give an acquittance or ^{1st Ch 167}
receipts. Mr Gould thinks this is not so ^{The holder in Ch}
well for it is necessary that he a receipt ^{by sum to imply}
be given after the Bill is sufficient evidence ^{negligent as before} ^{Chitty 157}
of payment the holder might demand an acquittance ^{of 1st Ch 17980}^{Ed Ray 742}

Presentation is regularly to be ^{2d Ch 129}
made to the drawee or his agent.

If no exception is not to be found at the time of payment it is sufficient if it ^{1st Ch 512}
be made at his house. The presentation need not be personal. ^{1st Ch 241}
^{2d Ch 44}
^{2d Ch 509}
^{Conn. Dig 500}
^{Mass 54-7}

And it has been judged that if the place of payment is at the holder's house or ^{2d Ch 509}
instruction of his books it sufficient that it is ^{safely} ^{answering}

If the Drawee after acceptance has
Aug^o 1087 removed from his former place of resi-
Bailey 587 dence, presentment for payment must be
So Ray 434 made at the place to which he has re-
Bif Rep 512 moved. - but if he has received the Bill
Aug^o 1257 may be protested

And here it may be mentioned generally, that presentment to the Drawee on
Aug^o 441 receipt or in any other way, so absent he should
Beau 607 remain - but presentment is not necessary
So Ray 443, to be made to the Drawee in order to satisfy
just the first Indorsement to the first in
order to satisfy the second Indorsement.

When a Bill is payable at a certain
date and as after a certain number of
Aug^o 136 days after sight the time of presentment
Dol 140 depends on the time expressed in the Bill
And when the time of payment is not ex-
pessed it depends upon the circumstances
of the case.

In the former case however if
Aug^o 160 is not payable strictly at the time af-
Barts 104 pointed for such act "days of grace" a C
Aug^o 15 allowed "be qua prole";

Golds 132 a/c
Bailes 23. 42.
Boizad 3. 33
Rep 11
Laur 163
Bart 10
Aug^o 15
So Ray 121
Aug^o 15

But where a Bill is payable on
certain days of grace are not allowed
with regard to Bills payable at sight if

It appears doubtful but it would seem that
they are not allowed. As to this there are contradictory authorities, 14 Stat. 170.
In this opinion the days of grace are allowed. That is to say, the 2 Cases 343
Collins' opinion this goes to the law in the US - See 1 Sturz 983 28 Stat. 195
4 Dallas 147.

If a Bill is made at a place not in one style and payable at a day certain
that style is allowed which is used in the
Country where it is payable. The old style
is in use in Russia and most of the King-
doms in Europe but not in England or Amer-
ica - - -

In computing the time of payment
when it is to be paid after eight or on a
certain day the day of the date is excluded
as if a Bill is payable 10 days after eight
and it is presented on the 1st of January it is
not payable on the 11th. P

Ed. 280	20
Pitt 13-15	
Ld. 1591.	
Bowes. 252	
5 Stat. 312	
Contra. 370	
not decided	

This is in opposition to the Com. Law
rule for by Com. Law if a instrument is to
take effect at a given time from the date
the day of the date is always included. D

If a Bill payable at a specified time
after date has no date it bears date from
the day of the delivery. P

2 N.Y. 308	
3 Stat. 223	
Caviller 714	
Bowes 448.	
Com. Digest	
Gaff. 123	
2d Ray 1076	
4 Stat. 332	
Bagley 88	
Bab. 1002	
Fiske 200	

Days of Grace are a certain period
of time allowed by custom to the drawee
or acceptor after the day of payment
has elapsed. There are now a number of rights,
the originally gratuitous. D. 12510, 125

4 Stat. 151-2	
10 Stat. 56	
D. 261	
Fiske 9-10	

These days are considerable according
Bills 140 working days of the Counter where the Bill
is taken paid.

The number of these days of
Grace are different in different Countries
Bower 260 and are according to the Customs of differ-
ent 130 in places. In England and in Scotland
Thirty 9. 10. three days are allowed, and in some Coun-
tries longer.

According to the uses of the
Mercantile Law. The Bill is to be pre-
sented at the time of payment but when
Firth 139 days of Grace are allowed it is not to be
till 140. Presented until the last of the days of
Grace. Here and in England Sunday
and Holidays are included in the days
of Grace.

~~Edw Reg 143.~~ If the last day of Grace happens
to be a Sunday or on a Holiday demand
Thy d. 120. ought to be made on the second day of Grace

Presentment for payment before the
13th Dec 1861 last day of Grace except in the case just
mentioned in mitigation and in abatement.

I have often seen of Bills for a day at
a time. This term means the Customary
or usual time appointed for the pay-
ment of Bills between those countries.

247

between which any Bill is drawn.
This only applies to Foreign Bills. Chitry 141

A Bill may be drawn at any number
of months or half months or days. Chitry 141
be named

If A Bill is drawn to pay after
at a Month or Months after date or after
eight the computation of by Calendars
Months. "Scus." by Com Law for accord-
ing to the gen^l. rule at Com Law by a
Month is meant a lunar Month. Chitry 143
Tys - 6
Bowers 253
In Com Law
Rule 41
2 P. Com 141
6 & Rep 224
2 East 33³/₄
page 150

And the Calendar month is to govern
whatever the length of it may be.

When the Bill is payable so many
days after sight the time is computed from 5 & Rep 212
the time of acceptance or of protest. Com Digest
to payment. The latter part of this rule 212 Merchant
does not apply to inland Bills for whence 4.7.
quite no protests for non acceptance.

Notice to the other parties is sufficient

When no certain time is fixed for pre- Chitry 415
sentment for payment it must be presented
in a reasonable time. or the holder bars
his claim upon the other parties. Tys 508
Do 1175
Do 1548
256 P. Com 565
18 Rep 1087
20 Rep 928
Chitry 69, 148
Tys 125
Bader 39
Dab 87

Presentments must be made in the
usual hours of business

Aug^r 416 And the Bill should not be left with the
26 Sept 910 acceptor until paid. — — — — —

Payment is regularly to be made to the
March 164 owner of the Bill or his agent and a payment
July 149 to any other person will not generally be consid-
ed the acceptance. except in the case of a Bill
transferrable by delivery or if it is lost and
comes into the hands of a bona fide holder.

Castl. 5 When the Bill is payable to & for the
2 Nov 310 use of B. payment must be made to it
Thy. 10^r-8 and not to B. — — —

London 28^r The acceptor is induced till the last
1 Dec 184 moment of the day of payment to pay the
25 Sept 173 Bill. — — —

This rule does not apply to foreign
4 Oct 174 Bills for if the Bill is not paid a protest
July 967 must be made on the day and notice
Thy. 121 must be sent on that day to the prior par-
ties. — — —

4 Oct 170 But in the case of inland Bills
Bagley 67 it seems it is not necessary to give notice till
March 140 the next day and therefore the acceptor is
in this case induced till the last moment. — — —

Thy. 121 If a Bill drawn in this Country to
4 Dec 174 be paid in a foreign Country and in foreign
Coin the value of which coin is afterwards

reduced by the Foreign Government before the Bill becomes due or payable. - in such Case it must be paid according to the value of the Coin at Chilly 154 the time of drawing the Bill. —

If the holder of a Bill compounded with the acceptor without the Consent of the Drawee both parties may be discharged. Compounding 160. — a Debtor is the receiving party of what is due Chilly 155 in satisfaction for the whole debt. —

But the holder receiving a dividend out of a Banker's Estate, does not discharge the Debtor 160 165 in such Case it is necessary to pay Chilly 155 sure that the holder of a dividend for his account and company make this compensation and it is advantageous to the former party whether he pays more what he can of the debt or less and if that is new holded that if the holder receives a Part in part satisfaction with the Debtor 163 out the Consent of the party for whom he is Debtor 164 discharged. — We could not see the reason 165 of this rule, for it is on act dangerous to those 166 who take the debts of others, and notwithstanding the authority Chilly 133 he takes the better opinion to be the contrary. Debtor 160, Cookes 167

It is said to be a matter of doubt whether the acceptor or other party, obliged to pay, can insist upon a receipt for payment. —

Mr Gould says this can be no doubt about it for a Debtor can excuse himself by saying that he was ready to pay but that the C^t — Debtor 180 would not give him a receipt. — in the city, New York 180 182

2d May 1742. of the party he pay the attorney and furnish
himself with paper as in other cases

His acceptance is "prima facie" ev-
idence that it was made by the acceptor
Parker 155 therefore if the Plaintiff and Drawers should
Chitay 157 pay the Bill he ought to take a receipt in
2d 1082 206 his own name.

The conduct to be pursued for the last-
named either of a Bill or assignment is in Gen. Chitay
158 202 the same as that in non-acceptance. He must
give a bill of non-acceptance to all prior
holders & protestations he intends to make and if
it is a foreign Bill he must have it pro-
tested & that notice in the case of a foreign
Bill is sufficient without a protest

Chitay 159 Now the form of a protest for non-acceptance

And if the acceptor pays the party of
the Bill a bill of non-acceptance of the
same must be given to all the Plaintiff
and his wife in discharge

2d May 1742 The Statute of 810 William 3rd pro-
vides that if an inland Bill is protested the
holder is entitled to an account and remedy
but the protest is not necessary to entitle the
holder to the account to which he was entitled be-
fore the enacting of the Statute. This Statute is
local only in its operation

The Protest of a Foreign Bill must be made on the day of refusal and notice must be sent by the earliest ordinary conveyance.

43 Rep^s 174
Ed Rep^s 443.
St Rep^s 829
27th Blk 555
Thys. 196.)

In the case of our Julian Bill it has been said that Notice given the day after refusal of payment is sufficiently early, indeed the better opinion seems to be that a valid notice cannot be given till the day following the refusal. Notice however should be given on the next day following the refusal.

If payment may be made "Subject to Protest" &c in the date of an acceptance -
 Ratio 891-2
 Bowes 3600
 Chitty 103-15

This may be either by the Drawer or by a Stooge. Offered to simple acceptance Bowes 57
 Ed. Druce. Coat Mar. for the honor of an Chitty 103,
 Endorser who in due Care he may for the honor of the Drawer.

If the acceptor has had no effects of the Drawer in his hands he may after simple acceptance pay for the honor of the Drawer. -
 Rep. Bow^s 143
 Thys. 153.
 Beaud. 545.

A payment "Subject to Protest" should never be made for any of the usual Trifles like at ^{ex} _{other} ^{ed} _{Chitty 105-03}
 Protest, for non payment ^{Offered the party paying ac} _{Q.D. 191. 203-5}

There is said to be a ^{sum enough to cover the} _{Bill agt. the two parties.}
 last rule if the acceptor for the honor of the Drawer has recd. the signature of the drawer.

Draw. 148?

A. Remonitory Note

is a direct enquire
My 218, 35^o went of the Frants making it no way a Deed or
Bill 155^o attorney no a favor. His Order looks to his
2 Bills 156^o on both sides of such favor or to secure him

A. Remonitory Note it is the nature of a
Bill of Exchange & Deed upon the same
itself.

A Com. Law a Remonitory Note was
not negotiable tho payable to the Order
there were indeed two and three hundred in a
page 151, soon of their negotiability before they were
45 Recd 151 made to be an English Statute. But all these
20 May 154 were gone down by Lord Hertf^t - then would
July 155 have been no question for making a Bill
27 May 156 in favour of their negotiability had it not
fall^r 157
20. 157 great for the opinion of Dr. Hertf^t which
20 May 158 were and are of great weight. A Bill of
5 July 159
D^r 156. Exchange as has been observed was nego-
tiable at Com. Law
3 June 1520.

According to this decision a Bill
made in the form of a Remonitory Note
was not an instrument according to the
technical acceptance of the word - and
consequently that it did not contain in itself
a Consideration and could not be reduced
either at the court or in a suit. One could be
given.)

given as evidence only to support an action
brought on the original Contract. But by
Stat^t 4 & 5 of Anne Promissory Notes being
due to Action Bearer to A or Bearer, or to
order of A, except upon the same footing
precisely, as Bills of Exchange.

This Stat^t is not obligatory here
and consequently Promissory Notes are not
negotiable.^{*} In some of the States the
Stat^t has been modified.

Since this Stat^t has been made the
rules relating to Bills of Exchange are abu-
jed to Promissory Notes payable
to Order or to Bearer. & it was in
matter of dispute whether they are
to be allowed in Promissory Notes, as in
Bills of Exchange. It is now decided in the
affirmative.

A Promissory Note when it is due is
dated, examples at Bill of Exchange endorsed ^{Aug 1 1621}
but tho' before endorsement in its operation ^{Aug 2 1621}
it is the same yet its nature is different ^{Aug 2 1621}

And for this reason a Promissory Note
when indorsed may be treated either as a ^{Colled 1620}
Bill of Exchange - Mr Gould doubts ^{Aug 2 1621}
whether it is ever proper to declare upon ^{Aug 2 1621}
it as such as well as against the law. -

Bankers Cash Notes.

Aug^d 4 15. These are a Species of Promissory Notes given
Oct^d 5 50 these are a Species of Promissory Notes given
Nov^d 11 5 by Bankers.
Dec^d 28 3

Desig^d 10 90 These are not negotiable before
Dec^d 15 50 the 1st of Jan^d after which they will be
Jan^d 16 5 20 taken at the same rate as Bills of Exchange.
Feb^d 3 0

March 4 4 These Bankers Notes being always pay-
May 4 35 able on demand are treated as Cash.
July 4 28
13 Bank 5 1

Aug^d 15 19 When in Gov^t Trasf by Return of the
Phil^d 17 1 are endorsed to the name of the holder
Sept^d 17 3 for payment to be declared upon as Bills of Exchange.
4 5 7 14 5
15 Oct^d 18 2

In all other particular they are subject
15 Oct^d 18 2 to the same rules as regular Promissory
Notes and Bills of Exchange.

Bank Notes.

These are subject to the Com^d Law and derived their origin from Stat^e 5 8 6 of 1800
and Stat^e 10 1 1 of 1804 and Stat^e 1 1 1 of 1806.

They are always payable on demand and considered as Money not as Securities
for Money. They will pass in a Will
under the word "Money" or Cash.

Bank 4 5 7 Bank Notes are those which are payable
5 5 4 not on demand but in a certain time after
5 5 5 3 5. They are valuable; will not therefore be found.

If a man has signed a Bank Note or
action for attorney's fees and received well and
lived against him unless he has received the
Money for it.

*Gold D 179
20 Feb 1838
D 179
Cavendish
176 Feb 289
5 Barn 2589
3 East 169.*

Bank Notes are not a legal tender
if the creditor at the time of effects to them
but if he does not object at the time he
cannot object afterwards.

No particular form is necessary for
the making of any Note, whether Promissory
Bankers Check, or Bank Notes.

An written instrument containing a promise
is to account for a certain sum is a
Promissory Note.

*8 May 1822
Aug 624
Dec 786
Oct 1396.
Bills - 32.*

There must be a promise to pay Money or it is not a Promissory Note. I O.R. on I O.U. 100[£]
is not a Note, but evidence of a debt to that amount.

There must be made payable in Money the same as Bills of Exchange.

*4 Feb 149
7 Feb 243
10 Feb 733
4 Mar 242*

As for all other instruments, consider the following Promissory Notes see Bills of Exchange.

Be it enacted by the State of Connecticut (A.D. 1812) so when enacted shall be called the
Custom Promissory Notes on the same terms and conditions as the
right of action against the same as in English Stat. 21 James 1st
As to Bills of Exchange in Connecticut.

Remedies.

Chitty 179.
22 Sept⁵ 471.

The usual action on Bills and Notes is "Affirmatib." and this is said to be the only action where there is no J. & S. inter alia between the parties.

45 Sept⁵ 471.

The Lessor may bring this action ag^t all the Parties for his Debts.

3 Oct⁵ 928.
7 Oct⁵ 64.
11 Dec⁵ 244.
2^o 521. 4.08.
2^o 515.
2^o — 516.

The Endorsee may bring an action ag^t any one or more of the makers and endorser ag^t the Endorser both at the same time. He can however have but one satisfaction.

2^o 521. 4.08.
2^o — 516.

The Drawee of a Bill may maintain an action ag^t the drawer or endorser for non-acceptance when the Bill has been accepted by way of the Bill. Chitty moreover thinks he may bring an action ag^t the Drawee

Oct⁵ 180. This day Mr Gould is unanimous and clearly of opinion that the Drawee before accepting for the Drawee before acceptance is not a party to the Bill and he can't be compelled to accept. After acceptance he becomes a party and may be compelled to pay it.

2^o 521. 885.
2^o 522. 888.
2^o 522. 271.
Chitty 480.

Any party who has been compelled to pay, may bring the action ag^t any of the parties.

15 Sept⁵ 269.
2^o 156.
2^o 196.

After acceptance having no effect this is his last way the Bill being maintained by action ag^t the Drawee.

15 Sept⁵ 269.
2^o 156.
2^o 196.

To a stranger,
John P. Miller.

But in gen^t other actions will not lie ag^t any one who becomes a party to the Bill after 25 Rep 470 the holder. This is however less ^{fair} unsufficiently - though the party comes to Bank & Business back against it.

This will cast ability to the acceptor for his obligation if he was - Then it is suggested that the holder cast again to A. D'Gaudous' authority his right agt the holder, or indorsees to each other, and if one could maintain an action ag^t the other the other might immediately recover, it looks by another action but the Law will not allow this for after an acknowledgment Parker would be "in Stake gone".

The action will not lie against the party from whom the off^r received the Bill until the off^r paid a valuable consideration for it.

If the holder of a Bill makes the acceptor his &c, and dies no action can be maintained ag^t any party, see page 274.

The holder may get one and the same named co-convene in action ag^t all before a Parker severally. So the action made by one who has all the effects of the debt but they are all liable for the costs of the action.

If in an action ag^t any one of the debtors he pays the amount of the Bill, and the cost of that action the left will stay and

be settled

25 Rep 551
Hdg - 155
25 Rep 421
D ^r 350.571
Doug. 6 614
10 M ^r 367
15 M ^r 185
Powden 184
Do 543
Sally 299
25 Rep 511-12
32 ^r 18
Park. 191
25 Rep 467
25 Rep 691
31 M ^r 867
25 Rep 494
25 Rep 112-16-18
C. City 1812
45 Rep 641
31 M ^r 515
25 Rep 749

995. June 7

another Decree in 1871. But the executive must
decide whether to call all the Courts of all the other sections or
Aug 2 515. the Ct. will not stay proceeding ag^t him
Dec 27 1871 749 for it is his fault. But the action of the Com-
Shuttle, 193. munity + the C. & R. Rep. comes not to hand. —
Don't sue the other
summons should
be served on the
defender when the said
said when liable
Aug 2 515.

Amount 408 A Note payable to order of J. H. Tracy
25 hours 87 be declared unpaid as payable to A.

It is not necessary in a Declaration.
Cath. 509 upon Bell's. so alledge^{to} a Promise to Pay
Fall. 128. But it is necessary in a Note because it
has⁴⁸⁶ said⁴⁸⁷ that the Note implies a Promise in the
Debt⁵³⁸ as said the Law implies a Promise in the
Law Merchant "Secur." in all other Cases
except the Law Merchant. -

Declaration in Hampshire.

Chy 8. 58. It is to be observed that the action may be
Ad 177197 founded upon the Bill or Note or deposit
3518718447 31Bar 1516. The Consideration. Then as the Note. the
July 1814 writing is considered as an instrument and the
10Bills 323 5D. 2011. Proprietary, in itself a Consideration —
Canper 832 777 If then the action is founded on the
July 107 35890 114 1st 24 Consideration and not on the Bill or Note
24 24 November the 1st place in what are called Bills
Chy 23348 842

The Common Count.

But it is usual to Count upon the
Bill or Note, and also to give one or two
at the Common Count. - as see post. 2d Ray 288
D 175-1542
In a decree upon Bills of Exchange it was Court 83
formerly usual to state at least all the D 267-270
values of the Law Merchant or for a day, & 2d Ray 177-80
called Books of Particular Care. afterwards it D 260-225
became customary to refer to the Custom
of Merchants that now neither is necessary.

In a decree upon a Promissory Note. - Chitty 245.
Since the enacting of the Statute of D. C. 185,
it used to declare that the Debt became
due to Day by virtue of that Statute.
This is very unpractical and I apprehend unnecessary.

If the action is founded on a Bill Court 443
2d Ray 443
or Note it is not necessary to allege a Con- D 487
sideration for an instrument imports a Consideration 2d Ray 758
2d Ray 1487
"See D."

Note in proceeding a Promissory Note is in Burnaby 243
useful to make a protest of its non-L 27385
but some of the qualities of a Deed by it is 4d Ray 388
not properly adduced

And when a Bill or Note don't take
effect according to its form it should be de- Aug 667
3d Ray 25149
clared upon according to its legal operation D 282-253
as a Bill payable to a fictitious person. 1st Ray 313
D 360
D 124-208

July 48. 58
D^o - 185-0 must be declared upon at payable to Creditors

63 Rep. 959.
17th July 313 prosecution etc. by an agent he may sue
£20 - 500. Declared after a hearing became a payable by
the action of his own fact for. give said sum all money due
say the man to whom he is promised to
pay as sum
Carried. 500
Suek. 128
2d Rep. 538 Declaration of his immediate Factor or
Rep. 1901
Oct. 185-4 Decree of the Bill. 1st Oct. 185-4
2d 2304 Decree of the Bill. It is said that an Factor may
have 674 receive what need there is for the word "im-
mediate" in this rule for in his opinion
Eding. 713 any subsequent Factor may declare ag^t the
Factor. as being Deceived. It is said that Bill
was inserted in blank for the factor may file it up to
himself and thus constitute him
self the immediate Judge.

In an action ag^t a third factor or Factor
Aug. 658. the factor must alledge a presentment, now
Bullock 88 payment and demands for acceptance, and
Witnessed. Payment and demands for acceptance, and
19th 43 also the party's refusal to pay, and that
5 Dec. 2 670, due notice was given for the Declaration
15 Rep. 712, must always declare all the allegations -
Oct. 188-6 D^o - 262 which entitle the party to his remedy -

Whether their Factor declares upon a Com-
mon Court, he may in some cases intro-
1st Rep. 426 duce the Bill itself or Note as a mere evi-
2d Rep. 725 dence of indebtedness. but here the Plaintiff
1st Rep. 602 be allowed to rebut the presumption, arising
from the production of the Bill or Note by your evidence

It may be proper here to award you what
if the action is brought upon the Bill or Note 34 Rep^d 174
it is not compelled for the Plaintiff to allege a 2 Sh. & 6d
want of Consideration. When the Plaintiff
alleges a want of Consideration the Plaintiff, found in his action
upon the Common Count alone, can give the Bill
in evidence -

Where the Plaintiff found his ac-
tion upon the Common Count or any other. It is not 35 Rep^d 174
and it appears clear that he should introduce the Bill for the 244
to support the action, but he may go into - ^{Aug^d 719.}
Parole testimony and prove the whole by, ^{Rep^d 245.}
such evidence. But it is usual and more ^{Rep^d 137.}
satisfactory before the Bill is evidence in
such cases.

The Bill Court in all cases has
given in evidence to support the action at ^{Aug^d 725}
the Common Count, for a deficiency, may arise ^{Aug^d 727}
from the creation of the Bill. ^{Rep^d 386.}
In an action by the Plaintiff against the ^{Jul^d 1515.}
Deacons of the Bible or whether the Note or the ^{Rep^d 123.}
Bill or Note is "Prima facie" evidence of
money due.

So likewise in an action by the
Plaintiff against his immediate Plaintiff the Bill
is "Prima facie" evidence of money received, ^{Mar^d 373.}
to be used. But "Prima facie" is conclusive - ^{Bailey 96.}
therefore in all cases except it be proved to ^{Chitty 190.}
the contrary for the invasion of "the right, the
unjustified, done, prohibited in Contrarium."

It is also said that a sole or sole it "prima facie" evidence of ~~counterfeit~~^{unorthodox} money paid by the holder. ~~it being~~ ^{the} evidence Bailey, 95, ^{is} another, which is no ^a vision however as that Whibley 191, which says all good banks do a reasonable rule. No matter how ^a natural the holder is from that ^a account in point of transfer that presumption will remain.

It has also been said that the "prophetess
Bailey" of the "Daily" says she holds on a "peculiar faith" —
With the C.R. of the 6th Dec. 1891 evidence that she has paid money back in ^{use of the} checks.
Chitty. 191 now where is not ^{use of the} ~~any~~

1780, p. 239. It has been held by judicially that a
D^r. or Mr. & Doctor in the hands of the ~~notary~~ physician is "Primum
Materiarum, &c." facio, evidence in Support of a Count
Chitry, 491 for money had and received, before lodges etc.

The Deacon can vindictive no better
7th Sept^o 572 except on the Rule of the Confession it often
he has accepted and refused or failed to pay

of what Deacon Morris did effects in
Report 266 his hands other Deacons may take the
Report 546, among them an action was taken laid out
Rep. Report 288 suspended and passed against the "revenue and the
Bill in his hands is "Pending now," even
now that he died from the stroke.

Wide as the land of the
golden ring a' leis' we done

Money had and received for the holder etc.
 So that in an action brought by the holder <sup>Salts 283⁵,
 against the Drawee or Holder the Bill or Note may be given in evidence of Money
 paid and received by the defendant for the bill
 & the off. <sup>3 Bay 1516⁵
 Bailes 95⁵
 Lewis 1st
 Title Evidence
 A.B. 30⁵</sup></sup>

It has been held that an account
 given by the Drawee is "prima facie" ev- ^{176 Blk 239}
 idence of an account stated between the ^{City 1912}
 Drawee and Drawor and will support the
 count of "Business Correspondent."

Rules of Evidence.

In this and in every other case the evi-
 dence is governed by the Pleadings.

Under the Gen. Plead. the Off. is
 bound to prove every material allegation
 contained in the Declaration.

Hence if an action is brought on a Bill
 or Note, and the Dft. pleads Non Recusit ^{Cooper 600,}
 it is incompetent for the Dft. to prove that ^{Dany. 9067}
 such Note or Bill was made either at ^{33rd Cr. 1787}
 or Stated in point of fact or according to ^{do. 843,}
 the legal effect. He must also prove that D^o — 611
 the Dft. is a party to the Bill or Note. — ^{Booke 7}

If an action is brought on a Conditional
 acceptance, as if the acceptance of the Dft. must
 prove that he did accept himself & by his

Aug^d 27, 1912 agent, and that the event on which he agreed
Dec. 571, to pay his half interest

But a Confession of the Defendant when
Aug^d 648, used as receipt is sufficient evidence as if
(D^d) - 1051 sum. - tho' it would not be sufficient as if
12.000^d 309
18^d Sept 15 any of the other practices for a Confession of
(D^d) - 143, acceptance is not evidence that the Drawer
in fact 150, drew the Bill.

1930 Oct. 20, 1930

13 Mar^o 1809 This rule as to Conventions
Reg^r 15 will apply to any other party
8 Dec^r 1807
Ed^r 1376 If an action is brought against the Drawee
D^r 1542 in London, & the D^r ft^r hand-writing must
Aug^r 334 be proved, be you advised.

For acknowledgement of signature
is sufficient evidence of the fact. If an
action is b.^t. ag^t of a person who is declared
ag^t as having transferred the Bill by delivery,
the def^t. must prove that it was delivered. —
But this may be done ^{by} presumption: — The
mere production of the Bill is sufficient evi-
dence of delivery unless this is rebutted by the
Defendant.

and where the Person Seeks or a
Biller which protest by such delivery, he may
in some cases be obliged to prove that he gave
a Consideration - & at other times it is a ground
for that Person's Seating up.

As between the Indorsee and drawer, it is
a general rule that the drawer must prove who
had written of the first indorsement and he must
do this tho' the draw. accepted the bill, unless
it was indorsed.

17 Rep. 654
Rep. Rep. 180.
Dang. 630.
Rep. 653.
32 Rep. 175.
Rep. Rep. 20.
D. 325.

There is the same necessity
when the action is against the drawer, by the Indorsee
for if the payee has not proved the holder has written

And if the action is brought by the
second or any subsequent Indorsee agt. the
drawer, if the indorsement is in place of the
hand writing of the first Indorser must be proved. 87
be proved, and as often as there is a trans- 176. 32 Rep. 606.
fer there must be a proof of the hand writing
e.g. A indorses to B B to C and C to D.
Who brings an action agt. the drawer, it is
here silent about, on him to prove the hand
writing of A, B and C.

The same rule applies if the action
is brought agt. the drawer or first Indorser. Dang. 617.
But if the first indorsement is in blank 633
it is not necessary to prove any other than 177. 296.
the first indorsement, which can be shown
by indorsement with his name.

The same rule holds if the action is
brought agt. the drawer or first Indorser. 178. 296.

If and when to be payable to a particular 208
payee or order, it is not necessary to prove 2 H. R. 144. 286.
any indorsement at all, as agt. the parties 176. 32 Rep. 323.
D. 386.
D. 506.

35 Chas^r 174 who knew what the Party was & fictitious
D^r 1823481 Persons - See rules on this subject and -

Bon^s Dec^r 1679 Plaintiff filed a suit on his order it being the
Dau^r 9 168. P^r must prove that he has used & is diligent
5 Jan^r 2 170 to obtain the Money from the Drawee in question.
17 Oct^r 7 172 so obtained the Money from the Drawee in question.
18 Nov^r 1 174

It follows from the Gen^r rule that when it
2 Feb^r 470
1 Mar^r 365 is necessary that the P^r should have presented
7 Feb^r 381 for payment and in some Cases for acceptance.
2 Mar^r 609 It is circumstances whether in an action ag^t
3 Aug^r 1067 the Drawee or the order holder must file -
15 Dec^r 7 172
18 Apr^r 145
2 May^r 117
5 Sept^r 167 sentiments also when Notice should have been
Salk^r 151 given that must be proved -

And where it is necessary for the holder
20 May 9 173 to give notice in a Cause to be brought
6 May 178 before a Jury whether for non-acceptance or non-
25 Dec^r 7 173 payment or at the Date may be left off.

Mar^r 27 170 The production of the Order itself and a
10 Feb^r 348 sufficient evidence of the fact. This is a depar-
10 Feb^r 60 tation from Common Law for this is not a Record -
10 Feb^r 7 172
Holt^r 297

2 Feb^r 609 In an action ag^t the Holder it is not
10 Feb^r 384 necessary to prove the payment both Drawers
noted
10 Feb^r 131-3
20 Mar^r 443
20 Mar^r 441
20 Mar^r 576
20 Mar^r 669

It was formerly holden otherwise -

From any one of the Holders paying the 85^r 20
and does not accept a Drawer be my friend
Holder he must prove that the Holder has

has been returned to him and that he has ~~paid~~ ^{Recd} May 74th,
paid it.

And if the Decease did not then ~~accept~~
accept the sum & to prove who done fact. ~~Recd~~ ^{Recd} May 74th

If a man makes a Bill of Exchange and the
Bd^d actually pays the Bill, he may ^{3d Willm. 18}
maintain an action ag^t the Drawee and ^{Shelby 183}
he must prove that he has paid it or what ^{D. 191. 203}
is equivalent to it - as that he was informed ^{D. 205.}
of it.

If a Decease having been obliged
to pay a Bill brings an action ag^t the
acceptor he must prove that the Defendant
did accept that sum and if payment was ^{18d Feb. 1847}
made, and refused, and what he himself - ^{18d Feb. 1855}
but can't compelled to pay it - yet if the ^{18d Sept. 1859}
can prove that he had no effects of the ^{3d Sept. 1862}
Decease in his hands it will be a good ^{14d Oct. 1862}
excuse acceptance is to be found in evidence
of the Decease having effects.

There was in the time of S^r M^r Mansfield
a great rule of Evidence called the rule in
"W^tton and Shelly," that no person who
had put his name on the Bill, or in any
way given it currency, can be a competent
Witness to prove the invalidity of such Bill
even in an action between them for debts.

~~1st Feb⁶ 300~~ This of course to be a rule of Commerce
~~3d Feb⁶ 360~~ nothing and in that Case was decided a rule
 of Evidence.

~~7th Feb⁶ 601~~ This decision has been overruled
~~10th Feb⁶ 332~~ in England, in the Case of ^{vs} Gathenoh
~~D^o 10, 85~~

~~11th Feb⁶ 298~~

~~12th Feb⁶ 52~~

~~D^o 22, 4~~

~~13th Feb⁶ 110~~

~~14th Feb⁶ 170~~

~~15th Feb⁶ 301~~

~~16th Feb⁶ 301~~

~~17th Feb⁶ 301~~

~~18th Feb⁶ 301~~

~~19th Feb⁶ 301~~

~~20th Feb⁶ 301~~

~~21st Feb⁶ 301~~

~~22nd Feb⁶ 301~~

~~23rd Feb⁶ 301~~

~~24th Feb⁶ 301~~

~~25th Feb⁶ 301~~

~~26th Feb⁶ 301~~

~~27th Feb⁶ 301~~

~~28th Feb⁶ 301~~

~~29th Feb⁶ 301~~

~~30th Feb⁶ 301~~

~~31st Feb⁶ 301~~

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If the Bill is lost a Copy or transcript evidence will be admitted. The rule is Ed. Ray 431 this that the lost evidence must be produced 1836 446 which the nature of the case will admit of as 1837 50 if this can't possibly be obtained the next best 1837 105 will be admitted & the contents of the Bill must be recited.

There are some distinctions in Evidence as to Copies of Instruments but they are granted at a sight as the Rule of Pleadings under the direction of the Court and Clerk.

In an action after the acceptor, after the Bill is drawn, the production of the Bill alone, his acceptance being proved 1836 48, 946 is sufficient evidence that the Drawee now 1837 1334 has 1837 90 the Bill. This rule is founded on the idea Ed. Ray 444 that the acceptor knows the hand writing of the Drawee, 1837 127 1837 244 1837 117. 78 Robt 604 1837 612.

Hence it is said when an action is brought after the acceptance by a bona fide holder he having accepted after sight of the Bill, its signature is no defense to show that the Drawee's name had been forged.

Buller in his "New Pract." says that Buller says the acceptor may rebut this.

This rule is obnoxious however if he so ^{authentic} _{actual} acted before sight of the Bill

Subhead
270

And it is said this rule is the same as
as the Indorsees when the action goes ag^t
him. -

page 240

Mr Gould doubts very much whether this
rule is correct except as against the first-
Indorser for it is not to be expected that
a second, or third or a fourth Indorser, should
be acquainted with the drawers hand writing
and indeed says Mr Gould it was intended to
extend only to the first Indorser only.

Payment of Money into Court

270

270 Rule 374. This is a substituted for Rule 36. It is an
270 Rule 375. admission of the Defendant's signature and his
370 Rule 376. cause of action is denied.
370 Rule 377. Cause of action is denied.
370 Rule 378.

But an offer to pay a debt of what
Billed Rule 36 is claimed upon the Bill. By way of Com-
promise it is admitted whether and that
in every species of action. -

270 Rule 379. Plaintiff having paid the Bill
270 Rule 380. by the hands of the Draw-
er, and the Drawer's Debt is to be considered
270 Rule 381. as prima facie evidence that the Plaintiff
270 Rule 382. has effects of the Drawer in his hands.
270 Rule 383. No effects of the Drawer in his hands.

It is understood as no question on this point
but if he has effects in his hands whether
not he ought absolutely to

The action is to be brought against
the

The Decease or Fraud of the Production by
the Plaintiff for Non-payment is itself suf-
ficient evidence of the fact of Non-payment
for Non-payment and of refusal

Brown 230,
47 Rep. 175.
Shinner 272
Bull 870.

It is also for me to prove, & this
is to proof that a Letter was left at the
Post Office, containing information that
the Bill was discharged. It is sufficient evi-
dence that the Bill was given over the Post
Office should have been given. Because the
Letter holder in such case does all that is
required by Law. It is sufficient also it is
to prove that such a Letter was left at the
Post Office.

But to take this evidence notice —
must have been given to the Defendant so
produce the Letter because that is the best
evidence the value of the Case will ad- Vols 12
and 13.

First.

VOL 13 It is said that he said that a holder who
receives a Bill after it was payable is liable to the
amount of the Bill which the Bill was turned between the two
men specified and this independent of his knowing the name
of the person. This is laid down by Bull and others. But it
is questionable. I think it would not now be considered
Laws. It also can't be held a contradiction. According
According to this rule there is no need of evidence of the
party to prove that the holder knew at the time that the
transfer was made in that there was no consideration.

7 P. C. L. 423
362 — 83
Hist. — 283
Wilson 230
2 Newb. 170
Chitty 114.

Saint 120,
Ed. Ray 175
Ed. 1484
Dong. 653
Ghatty 30, 58
Q. 75.
See, page 101

Ed. Ray 1545
2 East. 350.
Whately 173
184, 190-2
3 Hildon 213

Note 2. When one partner draws a Bill for himself and another he should do it for himself and another in the name of the firm, for often not it is doubtful according to the English Books whether the other or others should be bound. But it has been decided otherwise, in Court, on which it is held that both parties in the above case would be liable though one signed. (see also the Note in Bier was drawn for a partnership.) (Contra)

Note 3. In treatises you will find the word Instrument frequently used tho in the sense that is used is nowhere defined. It means such a writing as is the foundation of a suit or law. The Cash, bond, recency and a Bill of Exchange are Deed or Bond or good Recency Note. But this are certain or usual writings which do not support an action but are but the action is based on a legal promise and the writing is introduced as evidence of that promise. In the former case the declaration is founded on the instrument. But when it is not such an instrument it is a writing which is only evidence of a legal promise.

NOTE 4. The distinction as it stands in the Books. So far as it would be excepted exception is this. If the Consideration is alleged at C Law the subsequent Contra fide holder cannot recover. But when the Stat Law prohibits it and says the Bill is invalid at C Law and that can be no recovery between the parties but if it is negotiable and the holder is a Contra fide, one he can recover so when a Bill is given the Consideration which is to cover him like the same. But what is the reason that he cannot recover when the Stat Law prohibits it? It is not because the Stat says it must be valid. The true reason I conceive is this. For when a Stat Law does claim a Bill void - ita holder of it could recover the object of the Law would be defeated and the person intended to be protected would be the person injured by the Stat. And notwithstanding this in the example given the Stat does not hold him in an estoppel. Consideration valid. The object is to prevent the damage from the Stat. And when application

there could be a recovery agt. him the bawdman would be the person oppressed by reason of the transfer and the Stock would thus be invaded. So of a Bill given for a genuine debt to one of a creditor signing a Bank note Certificate.

This reasoning will not apply to Cases where the Bill is paid at C's hands before Consideration of it. Bill is considered as if given upon Consideration that one would Commit Paym. - C debaseth and lesseth if it is transferred to another person and remains never on it; the object of the Law will not be defeated. The man will have paid his debt but it will be to an honest man. If the original party could recover the object the Law would be defeated. So when the Consideration is to Commit bawdman to C. - And this Criterion of truth will be found to cover this also the case. And I think that our best Writers have not laid down the ^{particular} Carefully when they say that when a Bill is paid to another he can be no recover. For if a party to a Bill makes his own Consideration what was done at C's hands is made on such a Consideration as is contrary to what is unquestionably that a Consid. holder can recover. E.g. - a Bill of exchange made which is accepted at C's hands and a Bill is drawn in Consideration of Committing bawdman.

And the reason for the distinction I make is supplied by another reason viz that even when the Stock debaseth the Bill paid there may be a recovery between the Endorser and Transferee as if a drawer paid on a Bill on Consideration (or any other illegal Consideration) prohibited by Stat. &c. the drawer is said and no recovery can be had on it as between A & B (the Endorser) but C (the endorser) is not intended to be protected by the Stat. - the object was to protect the bawdman so suppose C endorses it to D. D may recover agt. C. bawdman.

Note 5th Another kind of a Bill is paid in its creation and then indorsed on an Indorsement Consideration or any other illegal Consideration, and afterwards is paid to a Consid. holder with notice he may not take of the Drawer or endorser but not agt. the drawer for he is the party intended to be protected by the Statute. But the drawer or endorser is not known to the holder and not intended to be protected by the Stat.

Note 6th The act of a plaintiff when there is nothing in the terms of it which implies a Consideration implies that the endorser has paid off the Drawer in his hand; then the Drawer is afterwards compelled to pay the Bill he may sue for

1 Seld. 3.40
Note 15

1 Harg. 115.8.
Dong. 7.13.0

1 East. 9.2.
7.2.5. 2.6.4.
8.2.7. 3.9.0
12.2.7. 2.7.3
1 Seld. 3.3.6

Douay 4.3.8
Wilm. 1.8.5
Seld. 2.3.6
2.2.2. 2.8.2
15.2. 15.1.7

Mayo 150?
Chiller. 403
171.203.205

accuse of the acceptor. Plaintiff has supposed that the acceptor can't prove that damage had no effect on his hands. If however the acceptor is found of fact to know of the Drawee's effects and says the Bill he has no excuse by agt. the Drawee. But this is not Ground; that he has no effects if the Drawee sees on him.

To all the other factors (except the Drawee) the acceptor is considered as the original debtor. He is the Plaintiff 187. Person liable. This is manifest if you consider the 2^o - 190 nature of a Bill in all its stages. First it deems a bill
Bank 927-31 on B'le, then of C and D signs to accept it now C
Mayo 150? must call on B'le before he has any claim on it for if his engagement is to pay it to B'le, not to B'le suppose it is
ordered to D and D must call on B'le before he can
claim so. The obligation of the endorser is this, he will
pay it to the acceptor if he does not pay him. Then he has three
claims 1st upon the acceptor. 2nd upon the endorser
and 3rd upon the Drawee and may sue either in this
order until he obtains satisfaction.

Plated 922
B'le 184.
2^o - 343
Bank 299.
2d Nov 5/14
300 - - 18,

If the holder makes the acceptor his 2^o and
either is discharged or if he is discharged the other remains
as of course for if the original liability is discharged the
secondary must be. The Drawee and endorser never incurred a liability to pay the holder if he due diligence be
done to claim the money off the acceptor. The reason the
holder is discharged is that the right and duty are left
in the drawee person and if an action was laid on it
it would be at B'le & B'le he would be both Plaintiff & Defendant.

It is not however to be understood that the Plaintiff
of the second holder can be exposed for no purpose
far as between the acceptor and the endorser of the second
holder may be a recovery in Equity Court of Law if there
is one.

Note 7. I have observed the Drawee is liable
for 2^o 713 and before that in the acceptor's hands from the first
date of acceptance. On the other hand if he has no effects
in 2^o - 714 in the Drawee's hands that fact affords a reasonable defense
Mayo 13 No 67 that he has sustained no injury by want of notice.
Plated 203 which according to some it must be, discharged by bad practical
sense 2^o 240 damage & becoming worthless cannot be considered
to be the actual and effects in the Drawee's hands for it is not
enough to notice according to others he is not guilty, but
entitled to notice. But if he has discharged actual damage
the want of it is a good defense. Thus a case could claim

accord where he has, sustained by want of notice which
had no effect in the Drawee's hand. but it may and
has and happened so in the Case of Rogers & Stephen page 217-18
in 20 Rep 713 - which see. This is a question on at least
much money as said on both sides. It is my opinion that 18 Edw 3 54
if the Drawee has sustained actual damage by reason of Note 29
not having notice tho' he had no effect in the Drawee's
hand, that should be a ground of offence.

Note 8th In case of an acceptance or operation
consideration want of notice is cured by a performance of Article 80-1
the condition at any time before the Bill becomes payable - D. 101
abst. for here it becomes an absolute and absolute; and - Regd. 212
when there is an absolute acceptance no notice is re- Lawes 571
q'd. 182
cepted. Note 29
page 219

Note 9th An endorsement in blank case, not for
be "then that the Endorser has parted with his interest or right
thus if a Bill is made payable to A and he endorses it in
blank and delivers it to B an action may be maintained
it in the name of A, for B may file at the Court with a Thyd 90
Power of Attorney &c. In pursuance of this note it has
been determined that when the holder has the Bill, and an
action of recovery was filed by the Endorser to recover of the holder
as the holder was a Competent Witness. I do not dis- Ed. Ray 871
cover on what principle this could be done, if it appears
in evidence if the other party can show that the
holder had really purchased the Bill, and the interest was
his; for then he has a direct interest in the event but
of this did not appear otherwise than by the endorsement.
He might be a witness, -- Salt. 130

Note 10th A Promissory Note when endorsed bears
a strong resemblance to a Bill of Exchange. Before endorsed
where it does not resemble a Bill of Exchange at all. If
it is a promissory Note to pay money to B, who was a Bill of
Exchange is an order drawn by A upon C requiring him
to pay the money to B. When the Promissory Note is
thus endorsed the endorsement is an order to one to pay the
contents to another. The Endorser is in the nature of a Drawee
in the Promissory Character Consistent with that of the
Drawee of a Bill. The Endorsee of a Promissory Note is as
the Payee of a Bill in

Note 11th There is however a distinction taken on Hobk. 208-6
this subject which I would not like to find here expressed
as it is long since expounded and is not now law. - See Salt. 134
3 Salt. 58,

Note 12th The Action of Debt, will in

some cases be a debt and some parties liable on a Bill of Exchange or Note. That is, Debt on Simple Contract, but a Person liable is not a Plaintiff. The action of Debt on Simple Contract was formerly much used, but afterwards was discontinued on account of the wages of Law which the Debt was allowed and what the Plaintiff must prove the exact sum laid on him could not moreover state. The wages of Law has long since discontinued and it has come to be that the Plaintiff may recover in Court without proving the exact sum laid. These distinctions being removed the action has lately been preserved in Westminster Hall.

It has been held in that a Debt will not lie on a Bill of Exchange in favour of the Payee against the Banker because it is said there is no privity.

There is no actual privity, the Lawyer who holds may never have seen the instrument, but yet there seems to be privity enough - his liability is primary. This proposition seems to be questionable because the instrument amounts to a promise to pay and there too there is privity enough.

It has been indeed determined that if money be delivered by A to B to be delivered by him delivered over to C C may maintain Debt agst B for non-delivery. There is no privity between B and C. (See Case 18) stronger than the one above. In that the Payee and Acceptor usually do much each other. In this C by the substitution never has seen B.

There is no doubt but a Debt will lie on a Bill or Note as between the parties in immediate privity so as to make the rule seem clear that whenever the C. L. on Customs raises a debt a Debt will lie. I think this rule is broad enough to include the case of Payee and Accepted before. But however that may be it is clear that Debt will lie between parties in immediate privity as e.g. Lawyer and debtor Payee and Debtor. (See Case 18)

Debt Paid 24
26 Oct 12/21
Dowry 0
D. 503 note
14 Oct 24/21
D. - 550

1 Silver 557

Widow 185
Silver 55 P
Ld Ray 88
Gilt 220

Croft 587
Tulverton 23
2 Rates 444
D. - 567

Gilt 220
Gilt 480
Widow 387
Tulverton 77
2nd Deuty 14
Gilt 14
Gilt 583
Silver 344
Gilt 70
D. - 550

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Practice of Connecticut.

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Practice of Connecticut.

Is held in the first place break of the jurisdiction of our Courts of Law in Civil Cases. The Criminal and Equitable jurisdictions will ^{not} be noticed here. Look under the proper Titles.

The Courts now to be treated of are 1st Single-Magistrates. 2nd Courts of Common Pleas. 3rd Superior Courts.

1st Single Magistrate - those Justices of the Peace to have original cognizance of all Civil Causes where the Title of Land is not concerned when the demand does not exceed 15 Dollars.

They have also original jurisdiction of all actions on Note or Bond given for money only and vouch'd by two Witnesses where the demand does not exceed 35 Dollars. ^{Swift 407} Kirby 282 ^{Conn 26}

If the Note or Bond is given for Money only but is vouch'd by only one Witness, no none a Single Magistrate has no Cognizance of it if it exceed 15 Dollars.

But this jurisdiction is not final for an appeal lies from the judgment of a Single Magistrate to the Ct of Common Pleas where the demand exceeds 7 Dollars ^{Brook 99} except in Cases of Bond or Note given for money only ^{D 126} and vouch'd by two Witnesses. An arbitration Note ^{Law 108} given for more than 15 Dollars and not exceeding 35 \$ is not cognizable by a Single Magistrate even if given for money only and vouch'd by two Witnesses. For-

This is not a Note for money only at the face thereof, but substantially given for the performance of an award. If an arbitration etc. be over 7 Dollars an appeal will lie from the Judge of a Justice rendering judgment thereon. It has frequently been a question whether a Note of Bond was originally given for more than 35 Dollars for money only, untouched & unendorsed, and afterwards endorsed to less than 35 Dollars whether a Justice has jurisdiction over it?

1st with 108 L. 108 L. 3. W. 108 L. 3. W. 108 L. 108 L.

Book 100. 477. 8. The Supreme C^t in the case of *Paine vs. Paine* determined that the face of the Note should determine the jurisdiction and that an endorsement cannot alter it, for that may be a part of the dispute, now can a party waive part of the Debt to lessen it to the jurisdiction of a Justice. But since this decision they have determined that the sum due also demanded shall determine the jurisdiction.

Mr Gould approves the fourth decision to be correct.

1st with 108 L. 108 L. 3. W. 108 L. 3. W. 108 L. 108 L.

Book 316. 223. If either of the Defendants to the Note or Bond be sued interested, or if the Justic^c sues any Cagin^d *Note of Thirty 387 is overruled. *When the title of Land is concerned the Stat^e which enacts, "that when an action of trespass is brought before a single Magistrate for damages done on Land, if the D^r presents title to the Land a record shall be made thereof, and this shall oust the Justice of his jurisdiction.

The Party making this speech shall be bound with one or more Sureties by way of recognizance,

recognized unto the opposite party in a sum
not exceeding 57 Dollars that he will pursue his Plea
and bring forward a Suit at the next County Court
in that County. This sum is to meet the Deft.
Should he not forward some prospect or institute a new
action in the County Ct to try the Title. But ^{Along 425-6}
the Plaintiff is negligent. the Plaintiff certifies the
whole procedure or record in his Ct which is sent
up to the County Ct where they would to try the title
and the Deft. must adhere to the original record
for he can't alter it either without or upon motion.

If after the record is thus certified to the County
Ct the Deft. neglect to pursue his Plea the Stat ⁴²⁶ ⁴³⁶
says that his default shall be recorded and then a
Second Facial may issue from the County Ct on his
recognition.

If he pursued his Plea in the County
Ct and fail to prove his title I say it is rendered against
him for full damages and Costs. But if after ^{1.3.5. 549.}
his Plea of Title he should refuse to enter into a recogni- ^{Stat 426,}
zation his Plea shall abate in d, his Plea shall not ^{2. Root 301,}
be regarded and Judge shall be rendered as if he had
not made such Plea and enquiry shall be made in-
to the facts as if the Genl. Offc had been pleaded and
no proof of the facts set up. Judg. of course goes agst. ^{2.}
the Deft. We have a late Stat enacting that if an
action be b. before a single magistrate for obstruct-
ing the waters of a River he and the Deft. shall be ¹⁷

cially-
D

N.D. 2^o

Stat^o 30 Specially a right to do it an appeal lies from the
Judge of such Magistrate, to the C.C. and from thence
Swift 108. to the Superior Court.

Stat^o 149 On every appeal from the Judge of a Single
Magistrate a duty of fifty cents must be paid and
a certificate thereof made by the magistrate. Otherwise
the appeal will abate.

Note. 3^d A Single Magistrate may take or accept the
confession or acknowledgement of any Debt not exceeding
Stat^o 248 70 Dollars exclusive of the Costs. From Debtor to his
Creditor either upon or without any affidavit
Swift 108. of receipt as the parties may agree. Which Confession
must be taken from the Debtor in Person. An
Attorney can confess in Court as in England. Of this
Confession the Magistrate must make a record and may
grant Execution. It has been determined that the Judge
should except the particular Debt or debt about which
it is contained as Bond Note or Book. That the Judge
may be a bar to an action brought for the same thing.

Kirby 236 The Judge must not go more Costs than the
Magistrate own fee if there have been no affidavit
of receipt. - if there have been the Cost of such Receipt
may be contained in such Judgment and all this must
appear of record.

Swift 109
Bath 1799
S.C. 1799
13 Root 327.
D. 309.

A Single Magistrate can't take a Con-
fession on an arbitration Note. for he is take Con-
fession only in case of a just and liquidated Debt.
- of the Confession of just on arbitration Notes &c al-
lowed the party can have no day in Court to object
P
1 agt

as the award, let it be even so irregularly made.

A Single Magistrate may under the Statute, Stat^r 221. administer the oath prescribed by Law to poor Debtors.

In an action before a Single Magistrate, a recognizance is required into for more than 15 Dollars a "Third Term" will not be returned to the Magistrate to enforce it. The only remedy is an action of debt before the County Court - for a "Third Term" is a judicial writ issuing regularly from a Court in which a Judge has been attested rendered for the purpose of carrying that judgment into effect; it can arise only from the Court where the Judgment is pending.

Note 4.

In all Civil Causes where the value of Land is in question, or the demand exceeds 15 Dollars, the County Court - has original jurisdiction and like Stat^r 28 gives final jurisdiction where the matter in demand does not exceed 70 Dollars - except in actions on Bond H^r 280 or Note given for money only and witnessed by two Persons Stat^r 29^r witness'd, and so when the value of Land is in question Stat^r 281 and in this case if such Bond or Note exceed 35 Dollars they have final jurisdiction.

By final jurisdiction is meant that third Judgment is not appealable from, but they may be reversed on writ of Error. An appeal from the County Court to the Superior Court lies in all cases where the value of Land H^r 280 is in question; or where the matter in demand exceeds Stat^r 1279 70 Dollars - except in actions on Note or Bond given for money only and witnessed by two Persons Stat^r 281 Note 5.

It is settled that the right of appeal is not determined by the sum demanded as damages in the close of the declaration, except 1st where the damages are specified, as in Cases of Torts - and 2nd When the action is founded on Contract and the sum of damages cannot be ascertained without extensive evidence.

Thirby 280
Thirby 35
Root 302.
D^r 127. 518.
D^r 148. 238.
D^r 216.
Root 137.
D^r 142. 370
D^r 377.
Root 525

If it appear from the record that according to the rules of ascertaining damages, Judgment cannot be rendered for more than 70 Dollars there can be no appeal merely from what appears at the close of the declaration. If granted it will affect the ^{may be avoided by the S^r C^t}

If an appeal should be granted in either of these cases, by the C^r C^t when it comes before the S^r C^t, the appellant may plead in a statement that the cause may be dismissed, and on one cause they "ex officio" do dismiss it from their docket.

Root 518
Thirby 378
Swift 90

The D^r on an action by Thirby should demand more than 70 Dollars yet if it appears from his own Book exhibited on oath that 70 Dollars is not due, the D^r may make it part of the record and prevent an appeal. It is to be taken advantage of by the D^r when the motion for an appeal is made, by objecting to the appeal.

Root 137
D^r 238
Swift 95-6

Yet in an action on an obligation noted for more than 70 Dollars if it appear from the record that the matter in Controversy or the award is not exceeding 70 Dollars no appeal lies. ^{If the Note is for more than 70 Dollars} the case is prima facie appealable.

Root 227³
D^r 316
D^r 566
Swift 30th 387
Damage 204-

In an action on Note or Bond given for money only, and satisfied by two witnesses for more than 70 Dollars if one of the Witnesses die or become interested an appeal lies from this Ct to the S^r C^t ^{W^r}

We have a Statute providing that in an action over a receipt ag^t an Officer do not exceeding an Esq^r no appeal lies from the Judge of the C^t whatever the sum in demand may be. Swift 101
Stat. 385-6
Root, 153

The same rule extends to a Justice of whom cognizable by him: there is one exception to the above Rule No^r "Where an action is brou^t before a single Magistrate for not serving an Esq^r grants or a Confession of more than 7 Pds, an appeal lies" Stat. 386
Root 153

In these cases the Officer is to have 14 days noticed if an Officer give a receipt for an attack meat and he is sued on such receipt, an appeal lies at Thirty, 40 in other cases. So also if an action be brou^t by an Officer - Swift 101
esq^r ag^t a receipts met no appeal lies. But in this case if the property be taken, or misused so as an appeal will lie. Stat. 386

From a Judgment rendered by the C^t on an award by arbitrators in an action of amount over 100⁰⁰ Swift 97
Stat. 37
d^r, no appeal lies.

If a cause be not appealable according to the provisions of our Stat^s, no agreement of the parties can make it appealable, or in other words, the parties cannot confer an appellate jurisdiction, their agreement cannot alter the law.

No appeal lies from a judge by default unless there was a hearing in damages, and if therefore Swift 97
Root 550
a hearing in damages and the party appeals, he can only be heard on the appeal as to the amount of dam Swift 90
ages. On a day recorded on a "Recd Receipt" in the C^t, an appeal lies to the Sup^r Ct. and I think the D^r may.)

Root 403 may plead as in ordinary Cases, for his refusing to
 Kirby 364 plead does not admit the D^r's right of action, as it
 Swift 90 seems to be in the Case of a default. - If he, however
 Root 109 decided that no appeal lies from the Ct to the Sup^r.
 in a "qui stand" prosecution for a Curse by soithwith
 proce^p. the reason is that the Proceedings are in Criminal form altogether.

From the Ct of a Single Magistrate in such
 Case an appeal lies however small the damages,
 note L - if the appeal is here on the Part of the D^r and never al-
 lowed on the Part of the Public, No appeal lies
 Swift 90 to an adjourned Ct in any Case. The words of the Stat^r
 Kirby 360 granting appeals are "to the next Court," which has
 referred to the next stated Term, and not to an ad-
 journed Session, which is properly but the Continua-

Note 6. tion of the Term. But are not new actions al-
 lowed to be broug^t to adjourned terms, ? The appeal must
 be taken in that term in which the Judg^r is rendered.
 a Party is allowed to appeal any time within the

Term. But it is best to move for an adjournment
 Note 7th after issue ^{on a new day & place} found or Judge rendered * Appeals to
 the Sup^r Ct. must be entered on the docket before the
 second opening of the Ct and not after, unless the Appeal
 Court shall pay to the Appellee all his Cost to that
 time, which shall not be refused however the Court
 Swift 90 may finally order which Cost to be paid and
 Stat^r 28th if the action may be entered before the jury are
 * H.C. 8th dismissed but not after. * But if the Appeal did
 not enter before the Jury are dismissed the Appellee

may enter at any time during the term appealed to, and have the Judg^t of the Ct affirmed with the additional Cost; but the appellant is not obliged thus to do, for he may sue on the bond. An appeal from one Ct to another, always the Judg^t appealed from, unless the Ct appealed to is deficient in jurisdiction.

The Judg^t in the Ct above when the appellant enters is a new & substantial Judg^t but if the appellee enters the Judg^t is not a new one but an affirmation of the Judg^t in the Ct below. The Judg^t however in the Ct below is suspended even when the Sup^r Ct wants jurisdiction till the Judg^t is quashed in the Ct above. A State duty of one Dollar ^{thirty 51} Stat 140⁹ Root 475² D^o - 11 is to payable in all appeals from the Judg^t of a Ct. And unless there be a certificate, that the duty is paid on the appeal, such appeal will not lie.

This duty must be paid at the time of taking the appeal. When the Ct is open on the appeal will not be sustained.

Suppose the record says the duty was paid can evidence be admitted to prove that it was Stat 150 not paid. Contradicting the record? It is said, and page 307 at 3 Toch^t Corr^t That the Certificate is conclusive.

It has been decided that an "Auditio Preterita" is appealable tho. the Judg^t complained of was on a Note which was not appealable. Either party may file an appeal except when the Note is altogether ^{2 D^o - 370} page 359 Note 7 in favor of the party making the appeal.

If a Ct. error be found but demanded he may have an appeal, and so may the Diff^r ^(peal)

Note 9th Appeal if the D^r Provo^r anything * If an appeal
 Root 50 be denied when it ought to be allowed a writ of
 D^r 518 Error lies; if it be allowed when it ought to be de-
 nied no writ of Error is necessary, for it is the duty
 Root 377 of the Sup^r Ct to quash it, but if they refuse to
 quash it a writ of Error lies to the Supreme Ct of
 Note 10th Errors. * If a Cause be not appealable and a
 motion be made for an appeal it may be de-
 feated in many ways. 1st He may object inter-
 Root 518. taining to the motion in the Ct below, 2nd If the
 thirty 378 appeal be allowed he may plead in abatement in
 Root 302 the Ct above 3rd He may move in arrest of
 D^r 127, Judg^t 4th He may bring a Writ of Error.
 D^r 525, 5th It may be cradd "at Office" by the Ct either
 Note 11th a motion or without it.

Sup^rior Court. This has no original ju-
 diction in Civil Causes properly so called, ex-
 clude 137-8 except when a suit is to be tried ag^t a. w. offered for
 Retal 2051 not returning a writ returnable to his Court,
 Stat^t 85 and not returning an Ex^t. issued by his Court,
 Stat^t 385. Its jurisdiction is not exclusive in these
 Stat^t 94-5, Cases, for actions may be tried in the C^t and
 Stat^t 38 most unusually here. This Ct has authority to
 Stat^t 97 issue Writs of "Sic et Fas" to enforce its own Judg^t
 This Court be called an original Court, for it is bound-
 ly to enfore a Judg^t already rendered or to hear about
 the proceedings in cases appealed from the Courts
 C^t. The Ct has appellate jurisdiction, and
 the C^t in all cases where an appeal will lie

from that Court. It has appellate jurisdiction over Causes, tried by the Ct. of and generally the same as those decided before County Ct. & An Act - Stat^o 133-4; Appeal lies to this Ct. from every Judge, decree, or determination, denied or error of a Ct. of Probate. -

This Ct. has jurisdiction of all writs of Error Stat^o 161-2, for the reversal of Judgment of County Ct. Single Magistrates, or any erroneous decree in Equity. -

The Supreme Court of Errors has jurisdiction of Writs of Error, in all respects, save & except for the reversal of any Judge or decree of the Superior Court Stat^o 126-7, in matters of Law or Equity where the matter complained of as erroneous, is apparent on the record - But it can take no cognizance of matters of fact - for it cannot enjoin a law.

Note 12thNote 13.th

This Ct. was instituted in 1784 previous to which time the General Assembly was the last resort. It consists of the Governor, Lieutenant Governor and Council in which the Governor presides and in his absence the Lieutenant Governor or if he be absent the Senior Assistant present. Eight of the Council constitute a Quorum.

Of the Proceedings by which Civil rights are enforced in our Ct. of Justice.

An Action or Suit is defined to be the lawful demand of ones right, and it is by action or Suit, 37 Conn^e 115 that also Civil rights are enforced.

The first stage of a suit in Court is the Writ and Declaration, which in our Practice go together, 28 Conn^e 188 Stat^o 244

Of the Writ

The Writ consists of all that part which purifies the statement of the Party claimed or demand of the signature
25th August 188, of the legislative certificate of duty paid, recognized
if over and direction to the Officer, or in default person.

The date is common to both the Writ & Declaration,
Stat^r 24th Oct^r 1883 except it other kinds. 1st Summons, 2^d Attachment
25th August 188, "by" process is used instead of compelling the
Def^t to appear in Court or by giving him an oppor-

tunity to appear if he so desires add to hold himself
25th August 188, to trial. The process contained in the Writ is Cal
23rd August 27th his original or mesne process to distringue^r or offend
3^d August 27th Court Process or Execution. * In England the pro-
cess^r Aug^r 13, diff^r is distinct from the original & whether the Writ
* Note 14th is a process, but when it is "to execute Secundum"
3^d August 27th it is not as in Eng^r. *

* Note 15th The Writ in Court must be signed by a Magis-
t^r t^r or Clerk or Clerk of the Ct to which it is returnable, it
25th August 1883 must describe the Ct to which returnable and the
25th August 1887 time and place of its service. Note 16th

Stat^r 24th When the process is by summons the direction
25th August 1887 to the Officer is to summon the Def^t to appear

When less attachment the Officer is directed
25th August 1887 to attack the Goods and Estate of the Def^t and for
Stat^r 28th August 1887 want thereof attack his body, and bind him and have
to appear before the Court. The Writ is ordinarily
directed to the Sheriff of the County his Deputy or to
the Constable of the Town where the Def^t dwelt,

Note 17th the Constable of the Town where the Def^t dwelt,
Stat^r 28th August 1887 The Writ may be directed to the Sheriff only

or to the Constable of the Town only, or no Sheriff & Sheriff of ++ or to D^r H^r. Constable & x & x but whether a single direction to a Deputy Sheriff is good seems to be questionable. When the direction is to the Sheriff generally or to the Sheriff by name, his General Sheriff, may execute the writ.

In ordinary cases the writ must be directed to some or all of the Officers. But the Stat^r provides that when a proper Officer cannot be had to serve the writ without great charge and inconvenience it may be directed to it to an indifferent person. And the name of such indifferent person must be inserted by the Magistrate in his handwriting and the reason for such direction must be inserted in it.

It would seem from our Stat^r and from a rule laid down in the Tho^t Chancery, that the reason should be inserted by the Magistrate himself as well as the name of the indifferent person, yet the practice is universally otherwise, for the reason is inserted by the draftsman and the name by the Magistrate. But it appears to me the Stat^r so much requires the reason to be in the handwriting of the Magistrate, as it does the name of the indifferent person.* Note 18

It has been decided, that the indifferent person need not make oath to the truth of the return, but a Special Deputy Sheriff must by Stat^r make oath to the truth of his return.

It is not fully settled what person is an indifferent person.

indif.

Council 1103
Salk^r 1B
Hob^r 1B. 1B.
Do - 95-6
Fulke D40.
Salk^r 95-6
P Blom 110
Do - 339.
Hob^r 221

Stat^r 1244
P Blom 7B.
1D^r 284.

1 Sheriff 187.

Stat^r 2845

indifferent person for that purpose. but the Circumstances that he is a Good-man in the Work is no disqualification. This has been decided by the Sup^r Court p 328. & that the Sheriff Deputy or Constable may be a Good-man in the Work which he serves.

Article 6 The Certificate of the Magistrate as to the work of directing the Work to an indifferent Person is Concluded and cannot be questioned. -

It has been decided by the Sup^r Ct that a conviction to the Sheriff or an indifferent person is ill 2 Swift 187-87 * Queen and the but it has been held by them that a conviction to East Lancashire - the Sheriff and an indifferent person is good. *

Article 7 If the return of the Work directed to an indifferent person be altered from one time or term to another the Work will abate. because the necessity which exists for such direction at one time may not exist at another. but such alteration when the Work is directed to a proper officer will not abate it. A Work agt. or Town may be directed to an inhabitant of that Town as an indifferent person. But in the case of Tylors Taylor it has been determined that a person is not a proper person legally capable of having Work directed to him as an indifferent person to have and retain -

Article 8 A Justice of the Peace can issue original Civil Process only throughout the County in which he resides for a to be a County Officer and do State in all legal Proceedings "In the Name of the Queen for the County of" to

In a new Stat^e he may issue into adjoining Countys
and of returnable in his own County. Stat^e 073.

A Justice may issue final process or pro- Kirby 182
cess of Execution throughout the State; he may like Stat^e 175
wise issue Criminal Process throughout the State D^r 247
to bring a delinquent to be tried before himself

So he may issue a Summons throughout
the State to bring Witness before him to testify in
such case. It has been decided by the Sup^rC^t 15 Rot 175
that a Justice may sign a writ in favour of the
Town in which he lives. So I presume he may
sign one agt^t the Town in which he lives.

Clerks of the Sup^r and County Cts. are authorized Stat^e 24
and to sign writs returnable to their respective Cts. 1 Swift 100
but no others.

Formerly there was but one Clerk
of the Sup^r Ct. he had authority to issue mesne pro-
cess into any part of the State returnable to his Ct.
Since then there has been one Clerk established for
each County and it is a question whether they can
issue mesne process out of their respective Counties. Noll 2. 6th

The Clerks of the Sup^r and County Cts. may Stat^e 24
clearly issue original process throughout their res - (D^r) 1247
pective Counties returnable to the Ct. of which they
are Clerks. The Clerks of the Sup^r and County Cts.
may issue mesne Criminal Process throughout
out the State returnable to their own Ct.; but
it must be done during term times and under the
order of the Court. It was formerly the Case that

Judges of the County Ct and Justices of the Peace
 Stat^o 247. Could not issue original Civil Process out of their
 2 Swift 187. respective Counties. Since by a later Stat^o they
 are authorized to issue all Process throughout the
 State, when returned to their own Courts.

But by a later Stat^o they are authorized to issue
 Stat^o 499 all Process throughout the State as well as Justices
 of the Peace may throughout their respective Counties.

Stat^o 247. The Governor Lieutenant Governor, and Judges
 D^o 499 of the Superior Ct and Assistants, are authorized to issue
 Civil Process throughout the State whether running or
 final.

The Writ by law practice must contain
 the names of the parties and the Town and County
 where they belong. This in ordinary Cases is the only
 necessary addition; but when the Office or Civil
 Stat^o 210 character of any of the parties is an inducement to
 2 Swift 187. the action that must be inserted, as if an Esq^o -
 said or is said, he must be described as A.B. Esq^o
 of the last Will and Testament of C.D.

In all writs in Civil Cases there must be
 Stat^o 149 paid a duty at the time of issuing them. This must
 be paid to the Magistrate. If the writ be re-
 turned before a single magistrate the duty is
 17 Cents. if to the County Ct \$1.00. if to the Superior
 Court 1\$. if to the Supreme Ct of Errors 2\$. and
 a duty of 2\$ is also payable on all Petitions of an
 adversary nature before the Gen^o Assembly.

The same rates of duty are imposed on
 Petitions in Ch^o. The Stat^o

The Stat^e requires that the payment of the duty
be inserted in words at full length on the Writ by
the Magistrate himself. It seems now to be Root 505
settled that if such a certificate do not on the Writ Q^d 475
the writ is not only unexecuted but is strictly void and Stat^e 150,
the C^o may "ex officio" erase it from their books -

If there be no certificate & a duplicate paid
the writ is not amendable. And the Full Court Root 505
have decided that a Magistrate cannot amend his
certificate of the duty.

The Stat^e provides that a writ once filled up
against one person cannot afterwards be filled up against Stat^e 150,
another, without a new duty being paid, and new Root 526
certificate thereof on the writ, and if such a writ be
brought without a new certificate, the C^o will erase
it from their books.

The Stat^e imposes a duty on "distress" ^{ex Root 525}
actions, for they are suits of the Party, and under his
control, and for his benefit through the public he
joined in the suit. No duty is imposed on
Public Prosecutions. - Note 21

It is necessary to the validity of a writ in
certain cases, that a good & prosecution be entered Stat^e 274.
This is always required on attachment, the Stat^e Root 553
providing that on every writ of attachment the ^{26 Day 1233}
Def^t shall give sufficient security to prosecute the
action to effect, and to answer all damage in case Stat^e 278
he makes not his plead good; the bond is taken by the Clerk, 378
according to the advice of the

Phys^t.

These Bonds for Prosecution are not in the nature of
Bail-Bonds, as many seem to suppose. This Security is
Brook 503. taken by way of Recognozance acknowledged before the
Magistrate, who signs the same at the time of issued.

Note 22. in it^d The Judicial Certificate on the worth of such
Recognozance being taken, is not the Recognozance it-
self, but merely a memorandum of it. — — —

It has long been a question whether the recogni-
zance is given as a Security for the Property attack-
ed, or whether it shall cover the Costs only? — most
of the profession hold that it is to secure the Costs only

Brook 322
2 Day 227 If the bond be given for Costs only, it is absolute-
ly negotiable to accept the Plaintiff's Bond, for he is liable
for Costs if no bond be given. But it has been
ruled by the Sup^r Court in Fairfield County at
the Term of August 1798 that the Plaintiff's own Bond is
sufficient when he was of sufficient ability to
pay, at the time of taking it. It is understood that
the decision was on the ground of usage — also doc-
cided in the Ct of Errors. If it appears to the Ct
before whom the suit is returned that the Plaintiff's own
bond is insufficient the Court may order a
new bond, and if not given will dismiss the suit. —

Brook 105 Before whom the suit is returned that the Plaintiff's own
bond is insufficient the Court may order a
new bond, and if not given will dismiss the suit. —

It has lately been decided by the Sup^r Ct
in New London County that if a magistrate signs
a blank warrant and takes a recognizance, and the
plaintiff be afterwards settled up that the warrant will
abate; for the Stat^e requires that the bond or recogni-
zance be taken to the adverse party in the suit
which

which cannot be done when none is named in the writ. According to our practice a bond for prosecution must be taken on all "quitam"-prosecutions, or forthwith process for the C.P. Court Stat. 34^o consider them as attachments. But when a "quitam" civil action is brought by process of summons a bond for prosecution is not required.

A bond for prosecution must be given by some substantial inhabitant of the State, where a writ issues in favour of some person who is not an inhabitant of the State. The necessity of which is apparent to account the costs - the Piff. being obliged to another State, in all cases where a bond for prosecution is required the writ will abate if such bond be not entered.

Our Stat. also requires that a bond for prosecution shall be given by some substantial inhabitant of the State where a magistrate issues a writ, and it appears to him that the Piff. is unable to respond the costs which the Dft. may recover agt. him. This applies only to Piffs. who are inhabitants of this State.

But in the last case I conceive the writ cannot be abated for want of a Bond, for the certificate of the Magis. Stat. 29^o state is conclusive evidence that the Piffs. inability to pay costs did not appear, and the Stat. provides for those cases only where the Piffs. inability appears.

But if the Dft. proves to the Court that the Piffs. ~~are~~ unable to pay costs and motion the Court Stat. 29^o will order a bond to be entered and if the Piffs. prove

refused to procure such bond he will be now sued.

It is sufficient to suppose the notice to the D^r that the D^r is unwell at the time of the motion, the motion must be made to the C^t within a reasonable time, if possible, for the D^r should not move at so late a period as to give the D^r no time to procure bonds.

Parley 344

Book 108

It has been decided by the S^t C^t of Law a motion made for such a bond after the Cause was called on for trial and the party impeached thick it was too late. If the Magistrate who takes the bond was guilty of any misconduct in doing it by which the D^r suffers damage, he will be liable to him in an action on the Case. The rule is if the bond at the time of taking it is apparently sufficient altho' it afterwards becomes insufficient the Magistrate is not liable for he has discharged his duty. But if the bond is apparently insufficient when it is taken the Magistrate is liable.

This rule holds in Cork of all branches as well when the D^r's own bond is taken as when it is that of a third person. The Law as to trials of Captain is different from trials of attachment tho' the last genl rule applies to both. When the D^r's own bond is taken on trials of Captain the Magistrate is at all events liable of the D^r is punished it not eventually able to get bond. The reason is that the D^r's own bond cannot be apparently sufficient for if it were deemed so the bond its intended by the Law

ca

allowing attachments would be totally defeated. For
the ^{Opposite} party is attacked as additional security not the
A.P.C. which he would not obtain if his adversaries
should might be taken on a writ of habeas corpus. S. at 360
Root 105-8 D. 261-56

On every twist of Crows a bond for your customer
must be given with Safety; in this case the ^{Diff'rent} Stat^{re} 152
bond cannot be taken for the Stock ^{as} expressly requires
that a bond be given with Safety.

In none of the cases above mentioned did the State require Security. So every party appealing from the judgment of one Ct. to another, must give bond with Security, here again the Opp's own bond is not sufficient. The appellant and bondsman are bound that the appellant shall prosecute his appeal to effect; by this is not meant that unless the appellant prevail in the Ct. above, that the bond shall be forfeited, but only that he shall prosecute.

But if he does not enter his appeal in the Court above, the land is forfeited, and in this case the appellator has two remedies: one by, entering the appeal himself, and taking Judgment in doing so; the measure of damages is the Judgment in the Petition below, and Costs. - or he may omit entering and resort to his action agst' the appellant.

Appellant. Be it therefore ordered by the Appellants returning the
Appeal in the Ct above, the Cond. man is released
as to the Engt. but not as to the Costs. (In order
to subject the Cond. man, the Appellants must take out
Ex. and have a return of "no. of invoices" as to *Quire
the Appellants Personal Property, * Atto Root 395.

The usual action for the Bond is by suit of
"Sore Facias" tho' an action of Debt will lie

The rule laid down at no bond now being
placed in a suit applies to bonds now and oth-

^{+ Note 23} rd documents and this holds tho' the appellant have
sufficient time past due. The ruling specially

of Bail does not exonerate the Bonds now and an aff.

* Note 24 rd or on an original process both are liable
for costs if sufficient process has been served, but not
served by the Plaintiff. Bonds for payment -

Note 24 now are not within the Stat^e of Limitations.
Stat^e 503 with rest to bail. As to Bail the Stat^e is
No. 305 that actions are barred in one year from the time
25th July 1755 that cause of action arises.

* Note 25 th June 1755 it rendered.

Where a Writ is returnable.

Note 26 Reciting to sue Stat^e in all transitory actions to be
2 days off sued in the S^t or C^t the writ is to be returned

^{+ Note 26} rd to the County where the S^t or C^t dwells.

This is different from the Common Law rule, for
there the suit must be boro^d and the writ return-
able in that County in which the cause of action
arises; but this C^t rule is evaded in transitory
actions, and in certain cases the C^t will change
the venue. In County where the holder of Land
is concerned the writ must be returned in that County
Note 27 by which the Land lies; without any reference to
stat^e 501 that County in which the Land stands.

In all actions of trespass "Quare Clam
sum pugio" it has been the practice to bring them

in the County in which the Land lies, whereon the
Fraught was committed, altho' they are in their nature
personal actions. It has been decided in Conn.
that a "Distress" action for an offence is a transitory
action, and may be b't in the County in which the Offense
was committed, & the Dif^r & wills, tho' the Offense was committed in another
County. And so I presume in the County in
which the Dif^r & wills. When the Offense is
presented by the Publick, the prosecution must be
b't in the County in which the Offense was Com-
mitted. * Through it be a genl rule that all
actions of a transitory nature must be b't in the
County in which the Off^r or Dif^r & wills. Yet a
Court of Error to the Sup^rCt must be b't in that
County in which the Judge complained of was tried. Note 28.
As to the time when the Writ must be returned.

Our Stat^e commands that all writs returned to the
C^rCt must be returned to the Clerks of the said Courts
in the day next preceding the Sittings of such C^rCt
and not afterwards. The Construction given by
all other States is "that they may be returned on or
before the day preceding the sitting of the Ct."

Later returns may be made by Consent of
Parties. for it is a maxim that a person may be
permitted to renounce a rule of Law, in his
own benefit. Under some Circumstances the Courts
have permitted late returns without the Consent of the
Parties, as when the Officer who served the writ was
sick.

Att^r wills.

Kirby 401
Brook 645

* Note 28.

Brook 255
Brook 254

Note 28.

The debts returnable to the Sup^r Ct must be
 Book 563 returned to the Clerk thereof before the second open-
 ing of the Ct. Will returnable to the Sup^r
 or C^r Ct must be paid to the Clerk next following
 the date of the work if there be sufficient in-
 tervening time to give legal notice. If it be
 3 Willow 341 made returnable to any other time than the
 Book 315 next when there is sufficient time so noticed it
 may be abated. or if I judge he render'd it will be
 erroneous also erased by order of the Ct ex officio
 for says Mr Gould, the work is void, a mere nullity.

Of Process and Service

Process in England as before remarked is the means of compelling the D^rft to appear in Court. But in Conn^t it is merely the means of sending him to trial and may be without his appearance in Court.

One Process is of two kinds viz 1st Summon^s
 Star^t 2nd & 3rd Attachment^s. When the Process is by Sum-
 mon^s served is made by reading the same in
 Book 447 the hearing of the D^rft or by leaving an attested Copy
 therewith at his usual place of abode. But it may be
 made by leaving a copy in the hands of the D^rft.

It is said that an officer is obliged to furnish the D^rft with a copy when the Process is
 by Summon^s. But our Stat^e makes no such pro-
 vision in Case of Summon^s. When there are

Book 4th & 5th two D^rfts in the State a copy must be left with
 each. But in Cases where Husband and Wife are
 sued one copy is sufficient.

C

The Copy as before remarked must be attested
and the Officer must endorse on the back thereof
that the within is a true Copy of the original. - If
the Copy whether attested or otherwise be not a true ^{Copy} 471
and the writ will abate. If the writ be served
by reading the affwadis leaving an erroneous Copy
will not abate the writ.

It is frequently practiced by the Dft's attorney
when the Dft's lives out of the State to acknowl. ^{which 469}
leg. Served of the writ. But it has been decided that ^{Copy} 477
an acknowledgement of service by the attorney with
out special authority for that purpose will not Con-
clude the Dft. Mr. Gould thinks that Judge ^{Copy} 477
Knox informed him that the Dft himself was not Con-
cluded by an acknowledgement in his own handwriting
dictated at New York when Atwood was ap-
pointed Judge. According to immemorial ^{Copy} 471
usage all Petitions and Writs of Error must be Ser. D. - 277.
and leg. Copy and in one Case it has been decided that ^{the} Note 279.
Writ of Error must be served by Copy *

In Petitions for New Trials and Writs of Error it is ^{25 with 184}
the Dft lives out of the State a Copy must be left
with his Attorney in the State.

It is said by Saiff that if a person acts
as an inhabitant of this State happens no to have a ^{25 with 186}
service on him by summons will be sufficient
to hold him to trial. When the process is by
Attachment served a regular warrant is ^{Copy} 471, 242
executing the body or property of the Dft after ^{Copy} 471
The Dft as to avoid see Saiff's book. - 25 with 186

~~Book 130, 340,
Book 54
D. 128, 553~~

~~Prop. 6, 128
Book 130,
D. 342
25 Sept. 1809
Recd. 34~~

~~County of 1803
Note 30~~

~~25 Sept. 1809~~

~~Note 31.~~

It is a settled Point that Service by sending a copy is sufficient to hold the Dft to trial tho' neither his Person nor Estate is attacked tho' the Officer may be liable to the Dft.
The Officer has no right to take the Dfts Body if he can find Personal Estate sufficient to answer the demand he knowing it to be the Property of the Dft. At C.L. it is otherwise. If an Officer send Properly no only half the demand he is not bound to take it and without a written license the Officer is not justified in taking it. ~~Book 128~~

The Guard apprehends that an Officer ought never to be liable to either Party for compelling to take Personal Estate, if he have any doubts as whom it belongs, for County of 1803 an Officer is not required to use any Personal service

The Guard apprehends that an Officer ought not to be liable to the Dft for taking his Body which he did not tender Properly it became incapable to the Officer. The Officer can't hold back the Body and properly of the Dft at the same time, and he is not to take the Body if he can find Personal Properly.

If the Officer however actually takes the Dfts Body notwithstanding is bound to take Personal Estate in view of the Body if it be afterwards tendered and on request by the Dft he is bound to attend him to the place where the Property is and refusal is declared to the Dft.

The Dft's Land is also liable to be taken in attachment but the Officer is not bound to take the Land if he can find Personal

Prob. 128

Property or his Body nor is he justified in taking Land where there is personal Estate or Body unless he have particular directions from theiff, so to do, but if he can find either Body or Personal Estate he must take Land, ^{Our Stat^o provides} that if Property real or personal be attached the Officer must leave with the Deft or at the place ^{Stat^o 34-5} of his usual abode if within this State a true and attested Copy of the Writ and of his return describing the Estate by him attached theron ^{2d Swift 170.}

And when any Real Estate is taken the Officer serving the Writ must leave a true and attested Copy thereof and a description of the Estate attached at the Town Clerk's Office in the Town where the Estate lies and until the Service is completed the Estate so attached shall not be helden by such attachment ^{Stat^o 38} agt any other Creditor or Consc^d Purchaser ^{Stat^o 38} unless such Copy be left in or near within seven days next after attaching the Estate and before the time limited by Law for the Service of such Writ is expired. ^{2d Swift 170.} But the omission of the Copy directed to be left with the Town Clerk will not abate the writ the object of leaving such Copy is merely to give notice to the world of the lie that is on the Land ^{12th Feb^r Vac^d Execution.}

Personal Estate attached is not holden to be served the writ agt the Debtor or any other Person ^{Stat^o 38} unless it be taken out and served upon it within 60 days after said writ is returned ^{2d Swift 170.}

But there is an exception to this rule when Property is under a Prior encumbrance, as pledged ^{for}

28th 189 for debt sue the attacking Officer shall lose his lien
 & D^r in 190 upon it if &c he not taken out and levied upon
 thereby 40 it within 80 days after such prior incumbrance
 is removed. At the Head Estate the lien over-
 also by the attachment is lost unless the Es^r is
 taken out and levied upon and appraised and such
 levy, and appraised returned within 4 months after
 said Judge, except when the Estate is under a
 prior incumbrance and then it must be done with-
 in 4 months after such incumbrance is removed

* Note 32

Left Coast
 N. America
 County July 1893.
 L.D.

1st 1893
 Oct 35
 28th 1894
 25th 1895

It has been a common practice for Officers
 in this State when they attack their Estates, to
 merely leave a copy with the Town Clerk and Doff
 without ever going onto the Land attacked. But it
 has been decided that the Officer cannot attack
 without actually going onto the ground*

When Personal Property is attached the Officer
 regularly takes it into his custody, for the purpose
 of moving, the Es^r stand after Judge is rendered, but
 he can retain them no longer than 80 days after
 said Judge this holds when there is no prior incum-
 brance

The Officer may subsequently do as
 per 115 delivered the property attached to a receipts man By
 Stat^d 326 a receipts man is meant some individual who
 thereby 40 gives the Officer a writing well executed certifying
 Stat^d 387 the receipt of such Goods and Chattels and thereby
 28th 1895 promising to deliver them to the Officer at a time
 1st Oct 1893 certain on our demand. But when the Officer
 do^r 42 takes a receipt it is his own responsibility to the Law

recovered

new or obliges him to do any ~~or~~

The Receipt man is not bound to deliver the
Property after 80 days from since he got and his Title 40-1
may be sold back to the original owner without Probate or
being liable on his receipt to the Officer, for after 28 days 1/2
the ^{Probate} is out the Officers authority over them by virtue
of the Statute has ceased

If after the expiration of 30 days the owner
should demand them of the recipient-man his refusal
to deliver them would subject him to an action for
their recovery * Note 34 Nibblet's case
fully within the —
Stat'tho Colloquy as a Person out of the State may stat'g
be annexed and this attachment will be sufficient Foot 47
to hold the Debt to him and his executors equally
who both parties resided out of the State. D

Invisible Property as Detained or taken from
Sail out of the State may be attached by attachment Stat^o 138-6
of Foreign Attachment 2 Jan^o 1837
visible property in
the State belonging to an absent Detainee Stat^o 138
posed to view Service may be made on it by leaving a copy 387
ing a copy of the attachment with the person who
has the custody of the property and such service will
be sufficient to hold the attachment Detained to trial.

If the absent defendant leaves over here and out of the State¹ 13th
bank of this State, or leaves, resides in it a copy must be sent² 34th
also left at the place of his last known abode in
the State. The rule is the same where invisible
property is attacked. But in all cases when the
Defendant is out of the State at the time of the action.

commenced and does not return before the first day of the term the Ct must continue the action to the next succeeding stated Term. But cannot be an adjourned Term; for this is nothing more than the continuance of a Term, if the Dft does not appear in person or by attorney and he so remits that

Stat^o 25. the notice of such hearing sent could not possibly be conveyed so timely during the vacation the Ct may further continue the action to a third Term, and if he don't then appear judge will be remanded ags^t him by default. If the Dft be in the State at the time of service his going out of the State after service and before the Term of Court does not authorize a continuance. And so if the Dft be not in inhabitant of the State but is here at the time of service his going out afterwards will not authorize a continuance. Or if the Dft come into the State before Ct and after service it will not be continued. So if the Dft be in any case willing to dispense with the continuance, then

Stat^o 25 is no need of one. In all these cases where Judge Swift 3350 intended ags^t an absent Debtor the Stat requires Ad^r 267 not the 8th to be stayed, till the Dft comes with the Clerk a bond with one or more sureties of double the value of the cause or sum recovered by such Judge, conditioned to refund or make restitution to the Dft such sum as shall be given in debt or damages or so much as shall be recovered in a suit wherein he has been within twelve months after Judge rendered

If upon such Suit the Judge shall be annulled
or reversed or altered the Debtor aforesaid is to be
no further answerable than for the recovery what
shall be made upon such Suit to be had with
in 12 months as aforesaid.

Act of Est. 1700
without such Bond being lodged with the Clerk the
Judge is erroneous, of which the Doff (but no more than
may take account) of such Est. therefore and all
Proceedings under it are good and valid as to all
other Persons except the Debtor.

This Statute also provides that the Debtor
may upon Est. aforesaid and absent Debtor shall not
be attired or kept until the expiration of 12 mons - Stat. 35
after Judge, or after a New Trial had, or a Suit
done, within 12 months, for the purpose of recovering,
restituting of such Estate.

It was formerly the Case in this State that
if a Writ of Fieri Facias attachment was brought before
a Single Magistrate, such magistrate in case the
Debtor was not in this State, and no Factor, Agent
or Fiduciary appeared to defend the Suit shall adjourn Stat. 470
the same, for a Term not less than 3 Months and
not more than nine. But upon such Attachment
to appear to the Suit then I conclude Judge must be
rendered immediately as before the Statute.)

If Judge be rendered by a Single Magistrate aforesaid
such absent Debtor, the "said Factor," aforesaid garnished
is affixed and signed by the Magistrate who rendered Stat. 470
the original Judge, unless he be removed by death or
otherwise, then any other proper Magistrate may do it. Then

Stat. 1700
Sect. 335-0
24. Do. 267.
*one lets take
40 days to be done

When the demand is the "Endorsement" does not exceed 15⁰ Dollars it must be made remunerated before the Magistrate who rendered the original Judgment unless he be dead or removed and then before any other Stat^r 470 before magistrate. But if it exceed 15⁰ Dollars it must be made remunerated before the County page 389 at 4th Ct in the County in which the Plaintiff Deth^r or the "Endorsement" dwells.

Miscellaneous Rules

In actions on specific Securities or Contracts when all the Defendants are not inhabitants of this State Service of Process may be made on such as are inhabitants. Plaintiff has sufficient notice to hold them aloof to trial, and if any Defendant whom the Plaintiff was not served be aggrieved by the Judgment he may be relieved by "Abstinentia Quoniam."

If one of the Defendants the out of the State at the time the Suit is commenced, he and exhibits out of this State service must be made on him by leaving a Copy at his usual place of abode here and the Suit of Court must be continued as heretofore mentioned. If the Plaintiff commences it one Term at least and Judgment is rendered it is erroneous. This point was decided by the Sup^r Ct in Middlesex County about 2 years ago.

If the Deth^r in a Suit is under the Case of a Controversy he must be cited to appear and defend. Thirty 174^r but the omitting to do it does not bar the Right for the Ct with great unusual cause to do so have it.

Con-

Constables are appointed by the County Court.
Overseers are appointed by the Select Men. -
When there are two or more Depts and Service is
desirable as to one of them the Clerk can make no
ad valorem of it.

Book 407
* Note 35

A Deputy Sheriff can't serve process for
or upon the Sheriff, as he acts under the authority
of the Sheriff his acts are the acts of the Sheriff
and it would be absurd that the Sheriff should
serve a process upon himself. But a Sheriff
may serve process for or upon his Deputy. 3 Dec 238.
The last tract was divided by Litchfield County
Ct in the case of James Banister vs Frederick
Philips, at September Term 1803. But the Ct
were not unanimous the Chief Judge and one
other dissenting. One Deputy may serve pro-
cess for or upon another Deputy for they are both
servants to one master.

When Towns, Societies, Trustees for Schools,
Proprietors of Common and undivided Lands, Grants
and other estates and interests and all other lawful
Societies and Communities are to be sued Service Stat^e 110
is to be made in case of a Town by leaving a
copy with the Select men or Town Clerk & with
the Clerk or Committee man in the case of So-
cieties, Trustees for Schools &c. Note 30

Of the time at which Service must be made.

Our Stat^e provides that no action shall be
required to be served to any Civil action unless

The writ of Summons to the Sup^r or County Ct^r
 Stat^r 24 has been served at least 12 days inclusive before
 25w^t 1888 the first day of the Court sitting or if returnable
 to an Assistant or Justice. 6 days inclusive as
 aforesaid In Suits ag^t Towns Societies
 Provisions of Common and undivided Lands, and
 Stat^r 110 other lawful Communities, tho' the writ be re-
 turnable before a Single magistrate yet 12 days
 notice is required & served by, foreign attach^r
 must be served by leaving a copy with the
 Stat^r 138 garnisher at least 14 days before the sitting of
 26w^t 1889 the Ct^r whether it be Sup^r County or Single
 Justice Ct^r In Suits ag^t Officers for not ex-
 27w^t 1899 ceuting their officers or for not returning them or for a
 Stat^r 38^r false Return Service must be made on them
 Note 37 14 days before Court

In all these cases the day on which the
 writ is served is included in the Constitu-
 tion, and the day on which the Ct^r sits is ex-
 cluded And if Service be made on the last
 day allowed for making Service it must be
 completed before the evening twilight is gone, and
 while there is sufficient light enough for the Officer
 to read the writ, and if not served till after the
 twilight will abate for insufficient Service

It has been decided by the Sup^r Ct^r that
 Prob^r 430 "quiet and prosecution but for the recovery of
 Penalties, are not within the foregoing rules, not to
 notice.

The rule is as to "Quisland" Prosecutions. They may be commenced by, forthwith process. If the "quisland" prosecution be commenced in the form of a Civil action the same notice will be required as in a Civil action.

In a Citation to a Conservator to appear in a cause the usual notice is not required by Stat^c 3rd Feby 1740 as in other cases. All that is required is reasonable notice of which the Court is to decide.

Of Bail.

Bail in Court is of two kinds 1st Bail to the Sheriff or other Officer and 2nd Special Bail, or Bail above. One division of Law does not at all correspond with the English. - - -

1st As to Bail to the Officer. When the Dft^t is arrested under an attachment it is the duty of the Officer to keep him so safe that he may have him forthcoming at the return of the W^t 3rd Com^s B^g 1740 Tidmarsh 1750 unless he offer and give sufficient bail for his appearance. The command of the W^t being to attach the Estate or Goods of the Dft^t and for want thereof to take his Body and him safely back so that he appear before the Court.

If no bail be offered or that which is offered be insufficient it is the duty of the Officer to keep the Dft^t safely and for this purpose he must be committed to jail for safe custody.

In Court a Dft^t can't be committed to jail Stat^c 34 Civil Off^c 1841 1991 2 1842 on mesne process without a writm^r.

This - N^o 38

This Writ is a Procesp directed to the Sheriff
by the Magistrate who signs it relating therin
the cause of the Deft's arrest and Commitment and
Commanding the Sheriff to receive him and hold
him safely till he be released by an order of

Stat^e. 38 Law By the English Stat^e 23^r Henry
8th anno 390 6th and by a Stat^e of our own the Officer is bound
Tolls, Tres^s &c accept Sufficient Bail when offered and so discharged
and - 106. the Dft. At C & the Off^t he might accept it but
was not obliged to do it

To Bail or admit to bail a Dft^t who has
been arrested is to deliver him over to his Sure-
ties on their giving Security to have him forth-
coming after return of the Writ.

The Off^t's right to arrest the body and mesne
process is founded in his ultimate right to arrest
him on Es^t. The Security which is given by the
Bail is called the Bail Bond

According to our Stat^e the Off^t must consist
of one or more substantial inhabitants of the
State of Sufficient ability to afford the Judge that
may be removed in the action ags^t the Dft

The Bail Bond is conditioned for the appearance
of the person so arrested before the Ct at which such
Court is made returnable & form of his Bond
may be seen in Jonathan Goodrich's Pract^t Off^t
Stat^e 30 cor. (or work of merit) This bond being given
for sum £20 the Dft is immediately discharged from arrest
28th Swift 191 and if the Magistrate arrests, refuses to accept
Supt

sufficient bail but retains the body he is liable
to the Det^t in an action of false imprisonment.^{3 Br. 170}

Note 39

If no bail or insufficient he offered the Det^t is to
be committed to Prison. When Committed to Prison
for want of bail he can't be detained therein
more than 5 days after the rising of the Court
in which judgment rendered. Therefore if the Sheriff
wants to detain him longer he must take out ^{Ex parte}
and have it levied on his body before the expiration
of such five days. If he do not this within
such time the Sailor is bound to discharge him
on paying his own fees as Sailed.^{*}

Note 40

But the Officer may release the Det^t without
bail; and if the Det^t appears in Ct at the return ^{3 Bl. 290}
of the writ or Suijend himself upon the Ct. the
Officer is bound to let this be alledged at the Officer's
own issue. But the Officer himself can
never become the Det^t bail for the bail bond is
to be taken to him as Sheriff otherwise it is void,
and if he is required to affix the bail bond to the
Court to exonerate himself. It is therefore
absurd and opposed to every legal idea of bail
that the Sheriff should be answerable in that ^{4 Bl. 420}
Capacity.^{*}

In Conn^t if the officer takes in ^{Note 41.} ³⁴
sufficient bail he is liable both ^{Ex parte} and to now
est inventus returned on the Ct. in an action

for an escape. In England the rule is other-^{3 Bl. 200}
wise for that if the bail be insufficient the first ^{4 Bl. 401}
place a rule is made on the Sheriff to return the ^{3 Bl. 261}
^{Ex parte}

Possessed & with it not already done, and if he does not do
 * Note 42. ¹⁰⁷ Second rule is made for the Sheriff to bring in the
 body. It has been decided in Conn that the Sheriff
 is not liable if he takes bail apparently
 Book 54 sufficient at the time of taking, & altho it becomes
 insufficient afterwards. But this is no answer to in
 3d Com 291 this rule in England for when the Officer makes
 Tidd. 150 his warrant he signs,
 The bail may at any
 time be discharged of the principal intention to

Exce^d 205, & can take him into custody and suspend
 6d^d 231 him to the Office. It has been supposed by
 7 Mod 44 65 98 some that the Gaol may rebuke his principal
 2d Reg 700 some that the Gaol may rebuke his principal
 Wm Blk 1273 on Sunday, but it has been decided in Great
 S. P. Ch. 25 Br. claim that he cannot, for it is not analogous
 3d Calk 148 to 148 to an involuntary escape +
 Ex. 605 to an involuntary escape +

Calk 262. The Gaol has no authority to command a constable
 Note 43. and in taking this principal, for they are in
 their nature mere keepers of the Principal, but
 they may obtain assistance if they can and the
 persons assisting them are not liable in respect

3d Reg 230
 153 Acad 207
 3d Reg 150 7. the action only looks in England and Conn.

Book 281. In England it is made so by Stat^e Anne
 150 102 So that after the bond is assigned an action may
 Do. 402 be brought in the name of the Officer, but according to
 Do. 207 our practice it may be brought in the Officers name
 after assignment and universally it

The point that the Officer might maintain an
 action in his own name after assignment was
 decided -

divided in the Case of New York vs Thall. in
Richfield County 1708.

If the P^r accept an assignment of the bail ^{to practice 150}
bond, he "ipso facto" discharges the officer. He ought talk ⁹⁹
therefore to be extremely cautious in accepting it. ^{9 Wilson 223}

In Court if the bail be sufficient the P^r
is bound to accept a bond in discharge of the officer
and according to the practice in Root 84 the P^r ^{that} 54
is bound to accept the assignment if the bail were Stat^t 39.
apparently sufficient at the time of entering into
the bond. If then the P^r having refused to
accept an assignment of the bail bond said the
officer for an escape. It is a good ^{pr} for the offi-
cer that he took bail apparently sufficient at the
time of taking it and is ready to assign the bond
It would bar the acceptability of the officers pleading
an offer to assign the bail bond. He supposed from Stat^t 30.
and Stat^t that it is the duty of the P^r to demand
the assignment and that it is sufficient for the
officer to stand in readiness whenever the demand
is made.

If the officer having recovered
judgment the bail bond is due. Sued ^{for his ex-} ^{Root 254}
or ^{for his} cost, is not barred by the P^r paying the creditor
the debt and cost, but he shall recover for what the
officer has paid and his fees.

It is a rule in England that the P^r can't be ^{157 H. 756}
twice holder to bail for the same cause of action, + ^{the} Rule 44
but this rule is not adopted in Conn^t.

Tho. the condition of the bail bond is that if the P^r
appears he - the bond shall be void. State his name etc
^{be named}

28 Augt 1744 now appears he did not work w^t forfeit and of the bond
 thirty days shd be in the terms of it if it be broken for less than $\$$ 10.
 Note 382 the Principal and not Exonerable till the P^t of
 Do 434 obtained S^t & Drd and has a return of now est
 Stat^r 39 inventus thereon Whether the D^t be make
 surrendered in C^t at the P^ts, rating it he would
 Stat^r 39 subject the baile to take out Es^m and no ale
 Feby 18^r and diligent to take the body of the Debtor; if
 the D^t be surrendered before a return of now est
 invented, it exonerates the baile.

Breaks the Principal makes aversion and
 28 Sept 1744 cannot be taken out the Es^m by the use of d^m
 Stat^r 39 diligence shd be in return of now est invented,
 Note 281 being made the baile becomes liable for the whole
 Do 428^r amount of the S^t & Drd recovered ags^t the Principal
 Note 45^r The proper person to be bid on the bond ags^t
 Note 1735 the baile is the action & D^t debt but from the words
 Feby 385 of me that it seems that a fine trial may be
 Stat^r 39 bid and Judges Swift and Elizworth seem so
 to suppose the same.

In the above cited case, June 7 Prob^r the que
 Note 281 now was raised but the D^t gave no opinion thereon
 Do 428^r, but dissented with any decision upon it, D^t M^r Oute
 Note 40^r Considered it an unsettled question at this time. *

An actual surrender of the Principal on the
 Es^m is not necessary to save the baile, for the officer
 is bound to use due diligence to take his body with
 which he is not warranted to make a return
 of now est invented.

It has been determined in a case where the
 J^r v

permitted that himself up in an inn or room and the
 master of the Officers from taking him. that the Officer was ^{Thirby 385}
 justified in returning a "now est inventus," and the bail ^{2d Swift 175}
 of Court liable for it is the justness of the return (if
 now est inventus), which in all Cases renders the Bail
 liable; Though it be a rule that no avoidance by
 the Principal, and a "now est inventus" turned the Bail
 into a subject until the return be not fairly made
 it will not subject him, because for this purpose the ^{2d Swift 174}
 return must be fair and without collusion. But it
 is not necessary for the Officer in order to subject the ^{Thirby 383}
 Bail to delay returning the Ex. for 60 days; the Law
 requires nothing more of the Officer than that he give
 a reasonable time for the surrender of the Principal
 of which the Court will judge when the particu-
 lar circumstances of each Case <sup>of the prisoner in the
bail is discharged st</sup> <sup>2d Swift 175,
1st Dec 216 ff
Nov 355)</sup>
 shall to the Sheriff may then be discharged ^{1st By}
 an agreed Surrender of the Body of the Dft. into ^{2nd By} ^{2d Swift 218}
^{2nd By} ^{or by his agent if he is absent} ^{3rd By} ^{2d Swift 337}
 the return of "now est inventus" or his being in a ^{or his agent if he is absent} ^{4th By} ^{Thirby 434}
 situation in which he may be taken before the Sheriff ^{5th By} ^{2d Swift 175}
^{3rd By} the Dft's procuring and entering ^{or his agent if he is absent} ^{6th By} ^{2d Swift 101}
 bail. ^{4th By} the Dft's accepting of the Dft a ^{7th By} ^{Thirby 434}
 & plea without his calling in Special Bail, and ^{8th By} ^{2d Swift 175}
 without the record in custody of the Court. ^{9th By} ^{2d Swift 175}
 But a mere appearance of the Dft in Court ^{10th By} ^{Thirby 434}
 without pleading does not discharge the bail. ^{11th By} ^{2d Swift 175}
 It is to be supposed that a delatory Plea will amount ^{12th By} ^{Thirby 434}
 to such a discharge as will discharge the bail. ^{13th By} ^{2d Swift 175}

628d^o 404
 The Ray^o 50. If the Dft be surrendered in Court it is necessary
 that he be made a witness of record for no other than
 2d Swif^t 1771 that he made a written affidavit for no other than
 Kirby 18, which evidence will be admitted to prove that surrendered,
 Leving^o 24 And so the Dft himself should swear
 3d Swif^t 1772 that the Ct takes the Dft into the custody of the State
 & He 47. ist. When a Dft whose body has been attacked
 appears in Ct and does not enter special bail
 Kirby 434 he must (if the Dft recognises it) plead in the usual
 2d Swif^t 1773 words of the Ct. these words "in custody of the Court"
 amount to a voluntary surrender of himself into
 their custody and as before remarked if the Dft
 accept a plea not containing these words the Dft's
 body is discharged. McGould observes when
 there has been an actual previous surrender of the
 Dft's body into Ct these words "in custody of the Court"
 are unnecessary. The ground on which the body
 is discharged is that the acceptance of the plea not
 containing the words "in custody of the Court" is a
 waiver of the right to detain the Dft's body.

Rebut^o 104.

But if the Dft having pleaded in custody prevails
 in the original action he is not obliged on a new
 trial being granted to plead in custody again now
 of course on the second trial is he obliged to enter
 in special bail. This point was raised in the case
 of Charles Bratton 46, Expts about 1799, when Expt
 on the original action pleaded in custody of the Court

It no special bail be given and the Dft accept
 in the Ct a plea from the Dft not containing
 the words "in custody" and the Dft prevails in the
 Ct

Cit on an appeal to the Sup^r Ct the Opp can not require him to plead in custody of the Ct; for having once admitted a Plea without the words he waives his right of afterwards requiring it. The rule would be the same if the Opp prevails in the Ct for the ground of not permitting it to be agreed in the Sup^r. It is not because the D^r has prevailed but because the Opp has waived his right of afterwards requiring it.

The same rule must obtain (I suppose), when a new trial is granted, by the County, or whichever party prevails therein.

The first stage of the proceedings after the return of the Writ. Appearance in Court is the Rule 8, first act of the Defendant in Court. He appears by Pro. 122th usually either in person or by Attorney. Note 48

At Law he cannot not appear by attorney. Co. Litt. 138^a but must have appeared in person. — 2^o Act 600 1^o M^o 244^b 2^o D^o . 83 And it is by provision of the Stat of Westminster 2^o 13 Edward I. that parties are allowed in England to appear by attorney. We have no Stat in Co. Litt. 75^c Conn^t allowing Parties to appear by attorney at Common^d & Stat^e 292^f the English Stat^g is operated here by adoption^h

But this regularly at Commonⁱ law parties could not appear by Attorney yet Corporations aggregated must have always so appeared for a Corporation has no physical existence in as Coke says has neither soul nor body^j Our Sup^r Ct has determined that an Attorney cannot appear for a F^k when it is Opp unless he is retained by vote of the Town.

* L. Smith.
cannot appear
as an attorney.
Stat. - 383
Moor 258
F. D. 41046
Co. Litt. 435
^{See}
Hill Hubbard
and W. G.
Guardian and Ward.

38 Brown 290

Brown 290 1
F. D. 150

Stat. 39.

38 Brown 391
Stat. 39

Thirty 42
Mo. 378
The English may
be taken before
Judge or commis-
sioner out of Ct
Thirty 378.

Board or legal agents specially appointed by vote of
the Board to manage the Suit * Solicitor, ad
sue & defend in Council for the Board, i.e., the
Attorney so retained can't appear for the Board.

An Infant D^t must always appear by Guardian
as no "next friend". But an Infant D^t can ap-
pear by Guardian only.

As to Special Bail.

When a D^t who has been arrested is bailed into Ct
by the Officer or is surrendered either by his own
voluntary act or by his bail he may be admit-
ted to Special Bail. The entering of Spec-
ial Bail "ipso facto" discharges bail to the Officer.

What we call Special Bail is called in England
Bail above or bail to the action. If the D^t

whose body has been arrested is not surrendered and
enters Special Bail, D^t must go agt him by
default. When Special Bail is offered which
the Off^r deems insufficient, he should except to it
which if he does, the Off^r will decide upon the ques-
tion as to its sufficiency. In Conn. Special
Bail is taken only in open Court and by way
of recognizance with Sureties that the D^t of the
Ct shall be satisfied by themselves, if not by the D^t.

The recognizance is made to pay all costs to the adverse
party, tho' formerly it was to the County Treasurer.

It has been decided that a party for whose
benefit a recognizance was taken, may sue and
recover judgment thereon, whether he were the Consignee
in,

in the Recognizance or not. If the Surety and he forfeited the Special Bail or obliged to satisfy, the Stat^r 34
which shall may be recovered including the Debt,
and Costs.

But the Recognizance is forfeited no
other way than by the principles avoidance and a
return of "non est in causa" or the C^r on

In England Special Bail are discharged if the Dft^r
be surrendered at any time before the "Sum Petition"
agst^r the Bail. It is a rule in England that no At^r Doug^r 450^r 55
Bench of the Ct to which the writ is returnable can Ro^r 450^r
be Special Bail; the object of the rule is said to be to prevent maintenance. This however is merely
a rule of Court, "Says" in Court. Johnson^r

Special Bail have a right to go into the house of their Principals for the purpose 25623^r 130
of taking him in the same manner that the law
applies to his own house. Mr Gould says Johnson^r
that the Bail have the same right ^{as} the
Sheriff after an escape.

It has been decided in England that the Bail may enter the house of 25623^r 130
a stranger the outer door being open, in order to take his Principal and break the inner door if found necessary. But Mr Gould supposes they may likewise break the outer door for this may be done
on original arrest as follows: on an arrest by the
Court, there is however not much to be found on
this subject. Don't they usually bail for appearance?

It has often been made a question whether Special Bail taken before a Court
in one State can take the Principal by virtue

3 Day 485. If the said Piece is another State? It has
7th November been once decided by our Sup^rCt in the af-
f^d of Kingston; this was in the Case of Hopps v. Waldecks
The question is now pending in the Supreme Ct
of Virginia. For the form of a Bail & Wⁱnd. 485.

No 3
Section 5
and 29th Dec^r 173
Hickey 378
Stat^r 39
Philip 378
B. 173
*Yesterdays
in Vans Debts
may be lost.
Stat^r 39.

If the said Judge be rendered ags^t the Def^t, he will
state, or avoid and by the Plaintiff the Bail is
subject to the whole amount of the Judg^t and Costs.

The usual and most proper action ags^t the
Bail is a "Sine Tenuis" for the action is brought to com-
force a Judg^t which is a walled off record.^t

And out the "Sine Tenuis" the original Judg^t ags^t
the Plaintiff is affirmed with additional Costs.

This "Sine Tenuis" which goes ags^t the Bail calls on
him to appear and show cause why that Judg^t should
not be affirmed. Rendered out Stat^r the sixth of
"Sine Tenuis" or other process on the bond must be done
ags^t the Plaintiff Bail and served within 12 months
after Judg^t

So also actions to the
Plaintiff must be done within the same time.

It has been decided in the construction of this
Clause that the months above mentioned are Calender
Days months and not Lunar; this is contrary to the gen^r
rule of Com Law. Under the "Lex Mercatoria" cal-
endar months are used.

According to our Practice no entry is made on
the record of the particular day when Judg^t is ren-
dered all Judg^t being entered up as on the first day
of the Term.

It has

It has been decided that this fact (the time of renewing Jdg^t) may be proved by other evidence than the record.

the friend. In one instance the Ct have allowed the Clerk to certify that Judg was suspended on a particular day, and in another they allowed in evidence, the Computation of interest on a security to that day in which Judg was suspended.

If otherw^d cause be given in the County Ct and
an appeal taken to the Sup^r Ct. it is sufficient
for the Dist^r Pro^r to prove that the "Summons" be served
on the Cred within 12 months after service of judgment in
the Sup^r Court. For in such case the judge in
the County Ct is not a senior judge within the meaning
of the Stat^r for the appeal to destroy the judge if the
County Ct. It follows from the limiting clause
in the Stat^r that § 84 must be taken out as^r the
princip^r and a return of now all inventories be made
within 12 months after service of judgment.

In order that due diligence may be used to take
the principal the Ex^d, must be taken out before a
reasonable time has elapsed

" It is settled that Suits for Bonds or recognizances
for Prosecutions are not within the Standing Clause
of the Stat^t, i.e., it is not necessary that such Suits
should be tried within 12 months.

A recognized entity into the prosecution Both are liable for
of an appeal will not exonerate the Special Gaol costs lost through
in the Card. Both the bonds men and Special Gaol Stat^o 39,
being liable. this is a crooked Society. cial liability for
Special) the debts or damages
on a claim brought
inventors.

Special Bail, and Bail to the Sheriff may on
M^r 36^o Judg^t being recovered ag^t them maintain an action
ag^t the Principal. So far the Ex^m is satisfied,

But if a bond of indemnity have been given to
Root 102^o the bail^t they may maintain an action thereon
No 409^o the principal, or a bond made by him,
20 - 507^o It shall be given in favour of the Dft^t
W^rift 175^o See Covenants to the Special Bail due of course discharged, as is also
See here^t that to the Sheriff when there is no Special Bail,
under the Title of Covenant broken And an erroneous judg^t tho' reversed on a writ^t of
Ex^m has the effect of a final judg^t under his Stat^t

Judg^t 102^o So also a judg^t in favour of the Dft^t tho'
Root 407^o a writ^t of set aside in a new trial being granted
Bo 56^o is final within this rule, and therefore such judg^t
W^rift 176^o discharged the bail. Says^t in England, Est^m 175^o
And the same rule extends

Root 409^o I conclude the bonds for prosecution, generally.

It shall not bind for the Dft^t as before re-
marked discharges the bail, and every judg^t in chief
in the Court of in favour of the Dft^t is a final judg^t
So every judg^t in chief rendered in the County Court
or a single magistrate, and not appealed from is
a final judg^t. If a judg^t be rendered ag^t the
Dft^t, the Special Bail may be discharged by Ex^m

W^rift 175^o issued thereon, and his body surrendered or taken on the
Co 175^o Before a return of "non est inventus" or by being in
T^rail 216^o Such a situation that he may be taken, or by death
Root 330^o of the Principal before return made, Special Bail
Hullow 4^o may on motion be changed if they have failed on any other
Root 575^o sufficient cause. The same rule holds as to condemned for prosecution
C^b

Of the Defence.

The Dft^t having appeared and when necessary having 33 Chanc 292
given special bail or been taken into custody he must (Do) 295
in the next place make his defence "Sicut in Englaud,
73 Chanc. P"

By defence is meant a denial of the Pltf's Cause of 33 Chanc 296
action. Judg^t is not called after defence made
but it may be in certain cases^{without defense} 1st Judg^t may
be rendered as well before as after defence made by
default. By one practice if the Dft^t do not appear
at the return of the writ after being publicly Stat^t 25
called three times in Court his default is recorded.

In the County Ct^t theocket is called on the
first day of the Term, and if the Dft^t don't appear
before the expiration of the second day and move to
have a trial (in such case he must pay down to
the aduersary his costs to that time) by having Stat^t 25
the default record and theocket the Judg^t shall
then be removed and on the third day ^{Ex} may be
granted.

In the Sup^r Court theocket is not usu-
ally called at all, regularly therefore the Judg^t by
default is not called till the case comes to its
turn for trial unless the Pltf moves that the case
be called. But by a rule of both Courts the
Pltf may at any time take judg^t by default and
let the attorney of the Dft^t file a状 upon his
honour in the Court that in his belief there is
a serious defence; this is to avoid delays or the
procrastination of Justice.

After,

246 Bill^c 351.
 Salk^c 210. After the Default the Dft is not in Court for
 Day^c 40^d the purpose of moving an appearance unless he has
 thirty^c 17^d been served with a process or
 18^c 96^d a hearing in damages. On a judge by default
 19^c 566^d or on the Plaintiff the damages are affixed by the C^c
 20^c 27^d Court and not by the Jury: this is called a hearing in
 damages. The Case in 80 Form Rep^c 395-410. Shows
 however that in England the damages in such Case
 Dam^c 301. are affixed on a trial of enquiry by the Jury. - If
 21^c 320^d late however in England a Jury has been impanelled
 22^c 305. 410. with, and the damages are affixed by the Court es-
 23^c 352^d pecially in actions on Bills of Exchange
 24^c 28.541.
 25^c 275^d It is difficult to learn how the Courts in Conn
 26^c 473^d Ct. 194 originally came by this authority to affix damages,
 the default^c pa. for the Plaintiff clearly does not authorize it. -
 27^c 2369^d Demands no-
 thing more than On default & affixed where the damages are pro-
 28^c 27^d vided by the Plaintiff, and no hearing in damages is moved
 29^c 30^d move something for by the Dft. Judge goes ags^c him for the whole
 30^c 30^d sum mentioned and demands for when Judge goes ags^c the Dft
 31^c 30^d makes a hearing by Default and he does not move for a hearing in
 32^c 30^d Damages for the Damages. He admits the sum demanded to be due.
 33^c 30^d whole amount.

34^c 30^d A motion for a hearing in damages is made
 35^c 30^d by the Plaintiff and he admits nothing more than that the
 36^c 30^d Plaintiff has a cause of action ags^c him to some a-
 37^c 278^d mount or other. But not to the amount demanded
 38^c 494^d or more. But not to the amount demanded
 39^c 155^d

But when the damages are ascertained, as on
 an obligation for money, there being no motion for a
 hearing in damages. The default admits no more
 than a sum from the face of the writing and its
 endorsement to be due, and with the amount demand-
 ed.

demanded in the declaration. The default amounts to the same admission, when the damages are ascertainable by reference to some known Standard.

And in action on a Note for Collateral articles here the Ct enquires into the value of the articles, without any motion made, of any person present about they stand. But in both these last Cases if D^r has given for money or for Collateral articles after a default suffered, and a motion made for a hearing in damages after default, it admits no more than that the D^r has a mere cause of action. In England when an action is brought and obligation for attorney & default suffered admits the same as in Conn.

In this last Case as in presupposed damages, if a motion be made for a hearing in damages after default, it admits no more than that the D^r has a mere cause of action. In England when an action is brought and obligation for attorney & default suffered admits the same as in Conn.

2^d Another mode by which Judg^t may be sent and as will often be done made as before is a Nonsuit. If the D^r after the return of the W^t, be guilty of any defaults or delays in not abiding by the rules of Law he is nonsuited.

D^r may be nonsuited by permitting himself to be publicly called three times and not answering, and this must be done before the verdict of the jury is received to the Clerk. Provided the Court accept the Nonsuit. If the first verdict should not be accepted the D^r may suffer a nonsuit before the second verdict is received to the Court, if

(England etc.)
being no motion
for a hearing in
damages, but a
jury inquiring the
rules which regulate,
the amount of fees
against a defendant
are somewhat of
peculiar use, and
are 3d Rep^s, 302)

Brown 265-6
Brook 571
Harter 373
and Potts 262

S. p. 11

if the Court don't accept the Second Cut return the
P^t to a third Consideration, the P^t may suffer
a Non-suit before such third Verdict is handed down.
Clerk. What tho' P^t suffers a non-suit the
P^t or motion may have Judg^t ags^t him for Costs,
Hilary B. 39. and this motion must be made at the same term
as to always it is which a Non-suit is suffered.

In England as well as in some of the rest of the world it
B. 350 is common for the Judge to order the P^t to be
non-suited when the Declaration does not disclose
a Cause of action, or the evidence does not sup-
port one. But the P^t is not obliged to submit
with to this order of the Judge tho' there is hardly an
case intimated where it has been resisted as it would be
infringement of the P^t to permit in proceeding with
the cause notwithstanding the will of the Judge opposed to him. But after
a Non-suit suffered under order of Court the P^t
is in Court for the purpose of moving to set it
aside as to his contrary to Law. After a Non-suit
the P^t may always sue again for the same Cause.

3^r Another instance where Judge may be per-
mitted to order a Non-suit before an offer of defense is made is a
Retraint which is an open and voluntary re-
nunciation of the suit by the P^t in Court.

13 Rop 552 In Court after a restraint he may sue
Q^t 571 again for the same Cause, but in England he
Hilary B. 73. cannot. If P^t may withdraw a suit
3^r Col. by R in Court in every case where he may suffer
a Non-suit. After

After a release of the Dft. must move
for a Jdg. for Costs at the same term at which Thirty 30th
the process is entered, or he waives the right.

There are two modes in which it becomes now
necessary to render any Jdg. at all. 1st If after
the Cause be publicly called on the first day of
the Term the Party engaged to appear the Court
may enter "no appearance" and the Cause is thus thirty 30th
out of Court. and cannot be afterwards ^{revised} renewed.

unless both Parties come into and consent thereto.

2nd If both Parties having once appeared said 1st Oct. 43rd
afterwards to appear a discontinuance is entered. -

The Defence is made at the part of the
Dft. by Pleading, the defence is really the intro-
duction to the Plead. Two and Practice would
quently omit the word "defend". As to the other
ext modes of defense Viz. Plea and Pleadings.

As to the time of making a Defence.

In the County Court on Stat^e enacts "that all
Pleads in abatement in said Ct. shall be made Stat^e 342
heard and determined, and the Cause thereof joined
and fully made, before the Jury are impannelled."

This has been found utterly impractical and
of course has been disregarded, and the rule now ^{o P.R.D.}
practiced upon is, that Plead in abatement shall
be made and tendered before the rising of the Court
in the afternoon of the second day.

In the Sup^r Ct. also original Plead in abate-
ment must be made and tendered to the Dft. on
lodged.

Prob^t 554 Lodged with the Clerk before the opening of the Court
in the afternoon of the second day

Thirty 389 ^{Pla}^r in ^{the} ^{80 to the month of} attachment of Jewels of Envoy are
not within this limitation. See petition in Ch^t.

Prob^t 564 Has been a long standing rule in the Sup^r
that ^{plea} to the action must be made by the
opening of the Ct in the morning of the third day,
when the Term is but one week, and by the opening
of the Ct in the morning of the fourth day when
the Term is longer. This rule has not been strictly
regarded. That since the new organization of
the Sup^r. Ct a rule is made at the close of
each Term for proceeding in the vacation to such
causes as are continued till next Court.

In certain cases under our Law the Dft.
may change his ^{plea}; the Stat^r provides that
whenever any party supposes he has missed his
^{plea} (whether the gen^r ^{Issue} or a special ^{plea})
which would have saved him in his just cause
he shall have liberty to alter his ^{plea} or to pay
Stat^r 342 costs to the time, and the opposite party shall
have reasonable time allowed him for making
Prob^t 425 answer thereto. Our Ct^r exercised a discretion in
allowing this alteration. The ^{rule} a gen^r rule

Thirty 89 that the Dft may alter after he has ^{plead} to
Do^r 90 issue, yet if judg^r have given thereon judgment, he cannot
make then ^{decreed} to the declaration. But it is
a gen^r rule that the Dft on an appeal may
change his ^{plea} in the Court appealed to, from
what

what it was in the Court below without leave of the Ct and without paying costs, this rule is not founded on any Stat^t. Whenever the Dft changes his Plea he must use the words "changing his Plea" - & the Dft cannot go back in the order of pleading, even when an Appeal has been taken (c^rg) of the Ct's Plead a dilatory Plead after having pleaded to the action. So the Ct upon an Appeal changes a Plead of Pto. in the action of Freshafft. The rule has been that "Plead" ^{*See last page} must be changed within the same time that original Plead to the action must be made. Rule Root 864 this rule has not been strictly observed and since the new organization of the Sup^r Ct has been entirely dispensed with. *int Suptia*.

Tho' the Dft has universally a right to change his Plead, yet there is no necessity of doing it, nor of making the same Plead again so he may rely on the Plead which he pleaded in the Court ^{Root 78} below. As to the alteration of a Plead in the Ct in which it was originally made, it has been decided that the Dft may make the alteration even after the trial by jury has commenced. <sup>D 404-434
D 406
2d Part 237</sup>

A replication need in the County Ct no ^{Root 351} Plead or statement may be added in the Sup^r Ct Q^r 425.

Our County Ct has decided that a Plead or statement cannot be amended. It has been said to that the Dft may alter his Plead after the cause has been argued and concurred and delivered up to the Ct for Judgment. <sup>Root 227
Root 476-7.</sup>

Op

Of Issue and Trial

The issue being closed the cause is then prepared for trial. The only matter of Law and no fact tried by the Court, and matters of fact tried by the Jury.

Stat^o 26th This sustained Court holds as to the Committee of a Single Magistrate for he has no jury.

Stat^o 34th Precessions of Law are very few involved in it but of fact and it is difficult to separate them and more so in Conn^t, where we give every thing in evidence under the General Issue.

Stat^o 26th Issues of fact may be concert of parties be closed with the Court and tried by them, and then agreement thereto must appear in the Plea. Issues in Law are always closed with the Court and tried by them.

The parties can't by agreement put themselves to the jury or a demurrer. After a trial has begun to the jury, it must proceed unless the parties withdraw or a nonsuit be suffered, or unless the parties agree to stop or postpone it.

Stat^o 2nd One Ct^t and giving the charge to the jury don't direct them how to find, nor do they give any open court on any question of Law or fact, which have arisen in the case. But if they be dissatisfied *Stat^o 118th* with the verdict of the jury, they may in Civil *Stat^o 17th* cases return them to a second and third consideration, & at no further. *Stat^o 41st* But not in Criminal cases, return them to a second and third consideration, & at no further.

In returning them for a further consideration they give their reason for dissenting from the Jury.

Stat^o 1st One Stat^o provides that when the parties have

made

made their Pleas, given in their evidence, and the Cause is committed to a Jury then shall be no after Pleas arguments, evidence or after Claps, heard or Stat^d 28 received in the Cause before the Jury, have returned their verdict into Court and the same is recorded.

The Party who is to prove the affirmatives of an issue in fact goes forward and likewise closes. Rule 571. the argument. But if issues in Law the Counsel for the Party taking the exception opens and closes the argument. It is a rule in Stat^d 36 motions and interlocutory questions that only one Counsel can be heard on a side without special leave of the Court, now on Pleas to the action unless the demand exceed 34 Dols or the value of Land is in question. This rule is disregarded except as to taxation of Costs when they allow fees to no more Officers than are allowed by the above rule.

Amendments, will receive no Consideration page 307 here being created under the Title of "Pleadings".

If a Person be arbitrarily made a Defendant to prevent his testifying in the Cause, there are two modes in which the Object may be defeated at the trial.

1st If no evidence at all be exhibited agt. the pd. Rule & R 285, so as joined the Opp motion will expense his Expenses 420 name and allow him to testify. R. 484.

2nd If there be some slight evidence produced agt. him, and such as in the opinion of the Opp will not be sufficient to convict him, he may on motion be tried first, and if acquitted by the jury be used as a Witness. — and for Challenges to the Jury see New Rules, and the Director's Judgment.

The Verdict

33 Com 377. The Verdict is the finding by the Jury, on the issue closed to them. Regularly every issue should be found affirmatively or negatively, and in the terms of the issued Closed, and it is not sufficient for them to say, that they find the issue for the Plaintiff or Defendant that they find all the material facts to be true.

W^m 33 Bk 78

Root 572

Yet if the jury find in terms the substance of the issue, the Verdict is good.

The Ct. may allow the Verdict to stand if it is found when the substance of the issue is found.

It is not allowable for the Constable or Officer, who attends the Jury, to be present in the room with them while they are deliberating upon the Cause, nor to have any communication with them, nor they with him related to the merits of the Cause. But it is not the practice to arrest the Verdict for such cause. **Quen*** **Root 350.**

4 Bk 2 B 5-6.

Esping 304

If the Jury give more damages than are so max'd to the Plaintiff may direct the excess by entering a "Remittitur" on the record, and take Jury for the rest.

To the mode of allowing interest by way of damages. See Title "Interest," and as to Sovereing damages. See Title "Assault and Battery," &c

Of Costs.

If C^t no Costs were allowed to either party. But if the Plaintiff did not prevail he was allowed "Pro bono falso clamor" - if he did prevail then the Defendant

Root 573.
For the defendant
to pay the expenses
of the Plaintiff
and costs of trial
a. s. See also the
titles of the several
articles.

Root 350.

4 Bk 2 B 5-6.

D^o 304

Root 66.

Esping 420

D^o 537

Or may demand
or require £2
or the full costs
improperly

Carter 283

3 Chit 288.

was "in misericordia" for his unjust detention of ^{Brook 511.}
the D^rff's right. But now Costs are allow-
ed in England by virtue of several Stat.^s the first
of which is that of Gloucester enacted in the 6th
year of the reign of Edward 1st. ^{Sub. 268.}

Costs are regularly allowed in Conn in Civil ^{268.}
actions except in few cases. ^{N. 268.}

1st Costs are used taxed for the D^rff in Error
in the suit in error, wh^e he may recover as sum Stat. 161,
ags the Costs, wh^e he ought to have recovered &
how has judg^d been rendered in his favour.

2nd When judg^d is arrested for the insufficiency ^{Brook 572}
of the declaration. ²⁷⁰ ²⁷¹ ²⁷²

3rd If the D^rff in an action of Cook & d^r,
fails to exhibit his amount on the trial, to be set
off ags. the D^rff, and afterwards brings an action
ags. the D^rff to recover what might have been
offset at a former trial, he shall recover no Costs. ^{Stat. 136.}
unless he shew to the Court that he had no know-
ledge of the former suit, or that he was inevitably
hindred from exhibiting his amount at that Trial.

4th On an appeal from a Ct of Probate to the
Sup^r Ct if the Judg^d be disaffirmed for a mistake Stat. 130
of the Judge of Probate no Costs are allowed to the appellee ^{Brook 151,}
last. If the mistake of the Judge of Probate were
occasioned by the fraud or neglect of the appellator
Costs are allowed.

We have a clause in our Stat.^s
providing that in actions of Freshf^d. Assault and
Battery -

Battery and Trespass on the Case, but before the Sub^r
 Stat^r 20 or County Ct if the Df^t recovers less than 7 Dollars
 damages he shall recover no more costs than damaged
 except^r 1st When the title of Land be in the Plaintiff
 Stat^r 20 except Cause of action, or matter in question, he may
 Recover 88.160, recover sale Costs however small the damages may be,
 2d with 2089. 2nd When the Df^t has appealed the Cause from
 Root 88 a single magistrate to the County Ct or from the
 Q^r - 100, County Ct to the Sub^r Ct, and the Df^t recovers he
 shall have sale Costs.

It is not necessary to entitle the Df^t to full
 2d with 208 Costs, that there be a ^r of Title. This Stat^r
 No 209 has never been construed to extend to actions on the
 Root 88 case arising "ex Contractu". -
 No - 100,

Root 130 In "Provo" if the effect of the Sub^r be to recover the
 Stat^r 22 thing demanded the Df^t shall have sale Costs altho'
 2d with 209 the Jury found the Special damages under 7 Dollars

We have a Stat^r providing that whenever a
 Df^t appeals from a Judge of a Plea in Abatement, and
 Stat^r 22 shall not make good his Plea by Judge of the Court
 2d with 209 appealed to Costs shall be awarded by such Court
 how ever the Cause shall finally issue

On final Judg^r in favor of the Df^t after abatement
 and amendment the Df^t shall recover no Costs
 antecedent to the amendment excepting witness duty,
 and Officers fees. It has been decided by the Sub^r

Root 325 What on appeal from Probate by a minor, if
 the decree of Probate be affirmed Costs shall be al-
 lowed ags him - "Minor" ought it not to have been
 taxed by his Guardian, who controlled him? And -

whether it might be allowed or not in his own Court agt. the Minnow as it should appear to the Court of Probate to be reasonable or not.

If an action in arrest of Judg^t & pleader be awarded, all Costs and taxed on, fine of Judg^t in Rook 373-
Paid by the prevailing party.

If in an action agt. two, on a several plea
one Jury one obtained a Judg^t and the Diff recover
agt. the other, the one acquitted shall recover his Rook 480
own Costs his witnesses shall be paid by the Ct
and Jury, and one Attorney fee only.

If two Diff be joined in an action in which
by the rules of Law they cannot be joined, and in Rook 550,
acquitted, the Ct will allow to each his full Costs,

If two or more Diffs. be joined when the
joined is passed, though both prevail but one bill
of Costs is taxed. So if two or more Diffs. re-
cover in a suit only one bill of Costs is taxed and
travel and attendance is taxed for one only.

The ordinary items of Costs are the Priced of witness
and duty - Officers fees for Serving - Diffs travel
for miles - his attendance for Day - witnesses -
travel and attendance, - Priced of depositions if any
Court and Jus^t fees - and Attorneys fees. —

No Attorneys fee is allowed before a single
Magistrate, and the reason is said to be be-
cause they are not Officers of such Courts; but
it is the practice for Attorneys to sign plead, as
Attorneys in High Justice Courts, but it is

improper and ought not to be done.

Copies in Case of Appeal may be an item of Costs. On a Petition for a New Trial if the Respondent be cited to appear at the term to which the Petition is returned, tho' the Petition itself be refused to another term the Respondent is entitled to Costs.

2 Root 31.

2 Root 130

In a "quit-claim" prosecution if the Defendant be acquitted he is entitled to recover his Costs of the prosecution the same as in a Civil Suit.

On a Judge's Confession before a Single Magistrate, the Magistrate can't tax any more Costs than his own fees for taking the Confession, unless it was in an antecedent process, which must appear in the record.

Costs are equally taxed in open Court by the junior Judge, tho' it is said in Thirby 351, that they may be taxed out of Court.

On Judge pronounced on a Bill in abatement Costs are taxed in the County Ct only up to the second day of the Term, altho' Judge be rendered on a later day. The Attorney for the prevailing party has a bill on the Costs and damages recovered by his Client. If the Money comes to his hands, he may retain the amount of the Bill. He may stop it "in transitu" if he can lay hold of it. If he applies to the Court they will prevent its being paid over till the demand be satisfied. The Attorney gives notice to the

Ebunap 584

Dougl 220

L. & L. 820

2 C. Bk 440

22^o - 587

the other Party not to pay till his bill shall be discharged. a payment by him after such notice, will be in his own wrong, and like^d pay ing a Debt which has been assigned after no-
tice. - For these rules see in the margin. -

Or if such Costs be in the hands of an Officer, the Attorney may give notice to him, not to pay it over to his Client, but to him the Attorney, and if after such notice he pay it to the Party, the Attorney may have an action against him. This is common both England and Conn.

But this law is subject to any equitable claim of the adverse party, by way of Setoff.

The Party who amends his writ or his Pleading is regularly to pay Costs at the first election of the Court. - This Sup^r Court adhered very strictly to this rule, but the County Court in the County of Litchfield do not. -

Finis.

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Appendix containing additions taken
from Mr. Gould's Notes.

Note 1st. Pursuant to processions &c. by
which with proofs, are appealable by the Dft. to Root 520
(it seems however & make the damages demanded at Conn 142
are. This is of a criminal nature.

Note 2^d. If the Dft. in such action ple. Root 410
ads the Gov. offce and relies upon his Title in D^o - 458,
evidence the Justic may determine the cause Root 440,
as in other cases.

Note 3^r. It must be paid at the time Root 11.12
of taking the appeal a subsequent appeal is
not sufficient "Quare" can the record of the Fed Stat. 150.7
be contradicted to prove the fact? (Item not)

Note 4th. "Quare" will not a Surety
be when such a recognized claimant below Stat. 39
the Justic and indeed in all cases to ensure that D^o - 470
own Judg. except agt. the Garnisher where the sum
demanded exceeds 15 Dollars

A Surety is held in some cases pending Statute of
the State, and regularly only from the Ct. to which it is remitted
it is returnable. Except in case of a Surety amendment
agt. the Garnisher, for more than 15 Dollars on a
Judg. rendered by a Justice. In this case it is signed Stat. 470
and issued by a Justice but returnable to the Ct.

If a Justice be having rendered Judg. in any
cause dies or is removed before Ex. granted or fails
to act -

Satisfied Debt lies on the Jdg^t; if the Debt or damage does not exceed 35 Dollars the action may be tried before another Justice and no appeal lies. If it exceeds that sum the action must be tried in the County Ct. But it must be tried within five years from the death or removal.

^{Chap. 109} A Justice cannot have ^{civil} cause out of the Court 202 Town in which he lives except when there is no D^r 300-13 Justice in the Town in which the cause is to be ^{Alon.} tried, who is qualified to determine it. ^{Secur} in ^{Book} 357. Criminal Cases.

^{Stat.} 142

^{Stat.} 247 But the Governor Lieutenant Governor assistants, and Judges of the Sup^r Ct may respectively by ex parte the Office of Justice throughout the State. But when acting as Justices they have no other judicial powers than Justices. Their jurisdiction is the same as to the subject matter.

Appeals from Justices must be entered in the Docket of the County Ct before the second opening May the Appeal entered in the Appellate法院 Docket is the practice.

^{Book} 440 In an action for Rent on Land demanding not more than 70 Dollars no appeal lies and left will be pleaded. Evidence of Title under the genl. Off^r is not sufficient.

^{Stat.} 32 At 8th An appeal may be taken from a Jdg^t on a Plea and statement without ^{Chap. 209.} fee. But if the Def^t appeals from such

Such Judg^t and does not make good his Plea in
the Ct appealed to costs shall be awarded ag^t him Rook 504
on the Judg^t in the Plea in abatement, and Ex^t
issued th^t he should prevail on the merits. And
he cannot attack the Ct above.

Note 7th. Otherwise Ex^t may appeal and
a subsequent appeal it is said is no supersedeas^t

Note 8th An Appeal destroys the Judg^t
appealed from unless the Ct appealed to wants ju-
risdiction, and even then it is supposed the Judg^t
is suspended till the appeal is quashed above.

Note 9th "Seems" where the Judg^t is ad-
together in ones favour. here he cannot. in Rook 318

Note 10th "Quee" Wild Bodie imme-
diately, on the allowance of an appeal. - I
Should think not. As I am at present advised
it may be taken in the Ct appealed to.

Note 11th The time allowed for plead-
ing in abatement of an appeal is the same
it seems, as is for ordinary Pleas in abatement.

Note 12th When on reversal the Ct would
enter his action in the Sup^t Ct for trial he Rook 85,
must do it in the term in which the Judg^t of
reversal is rendered.

Its jurisdiction in Cases of Divorce. Marita-
tus. Prohibition, and Habeas Corpus are vested, Stat^t 347.

of under their respective titles.

Note A party may appeal from a Judge to a Plea in abatement. (When an appeal is by Law allowed) without proceeding to Searc'd Judge in the Ct below. And if a Dft. after a Judge's ^{has} responded at outst, pleads to the action instead of appealing he cannot upon appeal from Searc'd Judge take any advantage in the Ct appealed to of his plea in abatement. - usage.

Note 13th The Genl Piftembl has cognizance by Petition of cases in which no other Ct can grant relief provided the matter in dispute exceed 25 Dols.

Note 14th In Conn. as the declaration issues with the writ it is not necessary to entitle the Piffl to Judge that the Dft. should appear. & By Stat. 12 George 1st a common appearance may be taken i.e. Common Bail filed by the Dft. for the Dft.

Writ of H. Note 15th In England a writ agt. two P^o - - 49 and demand agt. one only is regular in Cnt of York

Note 16th A writ Gained against a Stat. 470. garnished on a Judge rendered by a Single Magis. tate must be signed by him even when removable to the County Ct.

Stat. 384 Note 17th Constables have in Genl the R. Book 407. same powers within their respective Towns as

Stat. 175

Sheriff in their Counties. A Constable chosen
and sworn in one year and rechosen the next Rook 634
may draw Process before he is re sworn a second 18 Reg. 625,
time

Note 18. By a new Stat^t (of 1834) no
writ may be directed to an indifferent Person
until there are two or more Debts described of
different Counties, except where in cases left Stat^t 674
backment the Sheriff or his Clerk or Attorney will
make a affidavit that he truly believes that the
Deft. is in danger of losing his cause unless the affidavit
is endorsed on the writ.

Note 19. A Constable having begun & left 407
service in his own Town (as by attacking upon Ramsey
city) may go into another to complete it, as to - County of
leave a copy of Service agst. the Deft. of the Rook 407
Town of St. may be directed to the Constable of Rook 407,
the Town of St. And if he make service in
the Town of St. It is good, but he cannot serve it
in the Town of St.

All writs drawn by Sheriff their Deputies,
or Constables except in their own Town shall atake Stat^t 387

A Deputy Sheriff cannot & cannot draw Rook 45
a writ for or upon the Sheriff, since he acts Pro Hac
for the Sheriff and under his authority. But Cork Pleas
one Deputy may clearly & conveniently draw a Stat^t 1803
writ for or upon another. So the Sheriff may
serve for or upon his Deputy. Writs must be
signed by a Magistrate or a Justice or a Clerk of the Ct. he -

Note 20th According to usage with us
Bills must be signed by a Judge of the Ct to
which they are returnable; not to be issued without
a good & sufficient foundation for them.

Note 21^d Decided in the Supr. Court
August 1804 that the D^r may take advantage of the weak
Bill of Exchange of a Certificate of duty paid by a Clerk of Excise
after Budget in the D^r.

Note 22^d In England Security may
be required of foreign D^rs not residing but
no others.

Note 23^d The nonpayment of the
Principle on the Ex^m does not discharge the
Bondman for Prosecution. Nor indeed with any
thing but the payment of the Costs.

Note 24^d Nor does the bondman ap-
peal when the D^r appears to discharge the bond-
man for prosecution on the original Process.

The Bondman for the D^r on appeal is
to be liable for Costs if the D^r prevails tho' the D^r
does before the return of the Ex^m So I suppose
the Controversy of the D^r appeals and did not succeed
and the D^r prevailed.

Note 25^d Death of the D^r before
Note 25^d Judgment discharged the bond for prosecution.
Note 40^d Judgment in favour of the appellant is found
D° - 10% as to the bondman on the appeal tho' on a new
D° - 5% final Judgment is given for the defendant ready to pay. So

So I suppose if the first Supt. is reversed by a 2d. Supt. 175-6,
it will be a work of Error.

Note 20 This will hold in actions
at Law upon receipts for £1st agt^h off sets. Stock 90-1
Bank where they are compounded & under the Stock 384
Recd^t the sum must be cast to the C^t No. mth Thirty 113,
which the Est^r is returnable (so of original debts)

Who it may be in a different County before the
Sup'r't of estates & ready dwells there.

Note 27th Starts before Single Magis
beats must be concentrated in the hands in which
the P.P. or Doff, excepting when there is no other off. 207
guitarists in either, who can hardly buy them;
then the P.P. may give before a Magistrate in
one of the towns near adjoining his road.

Note 2.8th In transitory actions in Eng
land the Name may be changed or withdrawn
for reasonable cause, not of course & never
by Plea. Salk. 669, D. 670. ——————
Psal. 35,
7 & 8 R. 5435
B. Mon. 324
S. 874
P. B. 20

Note 29th It has lately been decided by Sub. Comit
that a work of Puror may be served by reading it atfield 1804

Note 30th. At Court Law the Office August Term
may, in Case of doubt, summon a Jury to 45th Rd. 633
ascertain, to whom the Property belongs, and if Dr. 648,
he does not he takes or omitts to take the prob. 20th Rd. 438.
only at his Plea

Note 31st So of arrests in final process Brook 120.
Dc.

Stat^r 34 Devised contrary by the Ch^t of Errors, but holden
2^d - 174 that the Officer may do it. He cannot hold
that 124 both property and body.

~~Barclay 84~~ Note 32^w If personal property sufficient
2^d 308^s to satisfy the Ex^c to be taken over in Ex^c the Diff^r
Salk 323, can not have a new Ex^c nor it seems, Debt on the
2^d Mod^r 14^s Judg^r. Note 33^w If a Person is in custody of
Ex^c £1000 or off his render an arrest in one cause & liber-
d Coke 89, as to the other an attachment agst the same
Person for another cause is a good arrest.

Note 34^b In an action on such a Rec^r
that of a chit it is not necessary for the officer to aver
that the Judge or Ex^c remains unstated in the
declaration.

~~Lawler 1~~ Note 35^b The Sheriff may not break
d Coke 93 open the outer Door or Window of the Def^r House
~~2^d 304~~ to arrest his body or take his Goods, &c^r if the
~~thirty 383~~ ~~Heobart 82~~ in new door the Def^r may be searched but the Sheriff
~~Ex^c 004-5~~ 005

An arrest on Sunday is held
2^d Rec^r 823, by Staff^r of Charles 2^w and so by our own
3 East 155^s by our Staff^r service of any Civil process is.

~~2^d 370-2~~ If one house is privileged out to himself
d Coke 48^r his Family and his Goods, he may other person or
his Eliz 544 another's Goods are in it the outer door may after
request be broken to arrest him or attach his Goods.

When a person under an illegal arrest at the
suit of one is fairly served with process at the suit

of another - the latter service is good; otherwise if there
was any collusion)

Note 30th. In England a Writs in one
body for an offence cannot be served with Civil 40 Ch. 8th
process without leave obtained of the Ct or one 17 C. 17th 174
of the Judges. Printed in Cork.

Note 31st. The rule holds & remains
only in cases of complaints under the Stat^e
and not in the ordinary cases of suits. at Root 901.
C Law as in offices, receipts, &c. There are Conn Stat. 384
Law Suits. Consider whether it does not hold also
Suits at C Law. Judge here informs me that
the Stat. Ct have considered the provision as
extending to all suits. agt. of law for not
executing will be that they may have two days
to seek their own remedy.

Note 32nd. A writs is necessary
cause the court does not order a commitment
The Sheriff according to our practice takes bail
offered. If the bail bond thus taken affixable as
in other cases?

Note 33rd. Rendered before commitment, 1601, 489,
1601, 582
for false imprisonment case lib. 1 Bl. 268, 2 Bl. 313, 6 Bl. 141

Note 40th. When the D^r is in the C^r, D^r 170,
is dead leaving no Ex^d and his relations decline Prob. 170
or refuse to take out, then the D^r may be Prob. 258
discharged by the Ct from which Ex^d issued so the same is C^r.

Note 41st Aug undertaking otherwise than
W^t Ch^s, 418 by Bail Bond that a Dft arrested on m^{re} & pro
P^d 109.234 cft shall appear in court by Sat^{ur} 23rd Henry 6.
Ch^s 2^o 58

Note 42nd if he does not and the latter
176.30.233, ruled to set Bail above an Attachment issued
2^o 180.1 2^o 180.1, and then to commit him to pay the Dft and Costs;

1^o Cast 383 **Note 43rd** But the Plaintiff is not bound
D^o, 390, to accept a Surrender before the return of the
Attachment 753 with it is optional with him, "Surrender of Bail"
7^o D^o 122 above, they may Surrender at any time and
8^o D^o 456 the Plaintiff must accept.

Note 44th i.e., While a suit is pending
W^t Ch^s 55.0 on one arrest the Dft can not be arrested again
Aug 9209.10 for the former cause; if he is the C^o w^l d^o is
charge him.

Gidd 56, formerly if the Dft was arrested
L^o Ch^s 679 in the first action he could not afterwards de-
sting 381 rest the Dft, for the same cause "Surrender" now.

D^o 1769, That was made in England in Dft's out-judg^t
Gidd 737 the Dft cannot be arrested, if he was arrested in
Aug 784 the Dft, cannot be arrested, if he was arrested in
D^o 1039 the original action,
2^o W^t Ch^s 93
2^o Ch^s 755.

Note 45th The return of "word est inow
nes must be made I conclude both as to the
Personal and the Personal Estate not as to the Real
Estate I suppose for the Dft is not obliged to ac-
cept real estate in discharge, or instead of the
body,

Note 4th In England the action must
be tried in the Court in which the original
action was tried. "Searis" in C.R.W.
 85 Feb. 152
 8^o D^o - 305.
 3^o Jun 1923
 3^o Aug 348
 2^o Oct 838.

Note 47th "Rene". Is it not the duty of
the Ct "ex officio" to order the Deft into custody? It shall. 39.
is not the practice

If the Principal is in custody for a crime the
Court may bring him up on habeas corpus. No. Wilson 218.
Searis him.

Note 48th In England by Stat. 12 Geo. I. 610, 124-6
the Deft may have a common appearance for
the Deft.

Note 49th For the mode of settling, see
Sect. 5. See Writs of Error and New Trials.

As to Execution see Bill Execution. Ct. Law 183
may command or suspend Ex. - or other writs in habeas corpus
properly issued.

Of Amendments. Originally at C. Law 3^o Com 457-11
amendments tho allowed before the record was filed 8^o Oct 89,
made up were regularly not permitted after 8^o Oct 1567
wards except in the cases in which the act 4^o Com 2567
ordained took place
 Law & Practice
 10. 23.

And according to the practice which com
menced about the 13th of Edward 1st and Com 3^o Com 450
and a long time not even the slightest and 4^o Com 2567
plainest mistake could regularly be rectified Law 8^o Oct 1567
after the record was enrolled and the term past.

At present amendments are more liberally
allowed

allowed in England at C^t Law, and where justice
Bk Com 407 requires it they are permitted at any time
while the Suit is pending, i.e before final Judg.
but not afterward.

Bk Com 4078 ^CBkt man in England all formal mis-
takes 10-5-6 taken, are in Gen^d aided by the Stat^t of Scotland
Bk Com 1098 which are numerous the earliest of which is
Laws 16.28. that of 14th Edward 3rd

Bk Com 96-7 ^{the} English Stat^ts extend in Gen^d to
D^o - 108 ^{classified} and formal mistakes, not to do w^t
Bk Com 118 ^{material} defects. Examples of formal mistakes
are Ely 644 & 860 the 15th of Edward 3rd Latin, false spelling, - misnomer &c
D^o - 159 ^a of substantial are sueing an Ex^c in the de-
f^t want of proper signature &c.

We have two Stat^ts on this Subject, the
first provides "that no Writ proceeding, Abatement
Stat^t B^o proceeding shall be abated, suspended or rescinded
for any kind of circumstantial error or mis-
take or defect, of the person and the cause may
be rightly understood by the C^t.

This provision however is too Gen^d and
fails to admit of any, effectual application
in practice. Pleas in abatement and special
demurrers, are probably as frequent and as suc-
cessful as if no such Stat^t existed.

Our old Stat^t provides also that when an
Agree in abatement S^t is rendered in favour
Stat^t B^o of the Dft. the Dft. shall have liberty to amend
his

his suit upon payment of Costs, to the time of the amendment. This Statute extended to formal & full only. It has been decided that a motion to amend under the Statute was unnecessary. ^{July 5-6.}

By our new Statute enacted in 1764, the several Chancery Courts of Law and Equity may at any time permit the Plaintiff to amend any defect in the Statute or informality in the Court's Record ^{22.27.8} now pleading or other part of the record in Civil Cases upon payment of Costs, at the discretion of the Ct. That Statute differs from the old one in several particulars.

1^o. Under this Statute motion to amend is necessary, "Or may permit" being under the old Statute,

2^o. Under the old Statute the Plaintiff only was amendable under the new one any part of the record.

3^o. Under the old Statute no amendment could be made until after a Judgment against the Plaintiff on a plea in abatement. Under the new Statute amendments may be made at any time by D^r — 119, the Plaintiff even before a plea made, and by either party at any time afterward.

4^o. On amendment under the old Statute, the Plaintiff was obliged absolutely to pay the legal Costs, Under the new he is allowed as in old Statute 500, as the amount of Costs is held in total disregard to money with the Ct.

The Sub. Ct. having allowed the payable Costs,

Cotts, agt. Westrach, amending almost universally
The Condescrit is published County Sodome alredy

5th, under the old Statute former O defects
only were amendable, under the new every
Species of defect may be amended, - except,

1st Where the process is "Searched and Seized"

2nd Writ 205 or otherwise void, & where no certificate of service is paid.

3rd Rule 505 2nd Where the amendment proposed would change
Rule 298, 294, 292 the nature of the action

3rd Where the Writ is not actually void the
Service 205 amendment proposed would not aid it. Des, for ex
where the service was insufficient

2nd Writ 297 4th D^r has been allowed to raise the
5th Rule 133 damages demanded, and in Halifax County
Indemnity 304 the Sup^r Ct in 1803 permitted a declaration
Rule 308, 3rd the 15 to be amended, after the Judge, when demurred that
Dang^r 304 it was insufficient

D^r 316, 438
Cav^r 140^r Application may be made after a verdict
Slay^r 041
8th Rule 320 - Special Judge off^r may be changed into Special Com
7th Rule 133, in the case of Bill vs. Clark. N^r Haven Ct, January 1800,

One of two Writs has been permitted to amend by
Rule 86, bearing the name of his Cott^r

Rule 116 A writ of Error misdescribing the Ct below
D^r 173, 551. is amendable before Appeal

Rule 16, 69 Writs of Error are not regularly amendable in
Court 320, England & Germany, 344. Rule 49, D^r 203, 9.

Writ of Error is in Conn. in the form of an
original writ. Used in England. 3rd Rule 47, 10th
Rule

If an amendment of a Work the Dft may
plead in abatement "de novo" and so as often as
amendments are made so from the time of the 3rd of Oct 1780
amending it is considered as a new Work.

But when a Party has cause to amend the
same, and at one time amenable defects,

The second of a Trial is not amenable on a
Work of Error unless he has some written min. (Root 178)
not by which to make the amendment.

So in the Sup't and County Ct's the right
to the of the Clerk cannot be amended after the Root 572
term is passed unless there are written minutes
in the Superior & Sessions during the Term.

Proceedings in Cl'ty are amenable as at Law, Root 472

The Dft is allowed to amend his speech after
trial begun to the Jury. Root 406

The Stat's of amendments do not extend to Quin brook 144
in Criminal Prosecutions, nor to the same, forthwith brook 414
Prosecutions. Barr 1099. R. Bar 5-6. Saltk 51. Root 55.

All Law there is no difference as to amend the statement
ment in Criminal and Civil Causes. Root 1069

If the Statement of law extrinsic fact will
make the Work good it may be amended
thus where the defect in the Work is extrinsic it
may be amended if the Statement of the truth
will make it good e.g. minor & misdescriptione

But if such Statement will not aid the
Work it is impossible to amend. E.g. where the Work 265

Served is insufficient in fact tho' the indorsement imports good service. There had can be no amendment. So of procedure, of a former suit for the same cause. So if the return of a Swift Bill, served is insufficient upon the face of it yet if sufficient and fact the writ may be amended by, stating the truth.

But where the writ is void it is impossible in the nature of the case by any, allegation to make it good e.g. where there is no signature of a magistrate, no certificate of duly paid, no direction to an office to be.

In some instances a Verdict may be amended by, the Clerk, the Declaration containing good and bad counts no evidence is given on the bad, the jury find a general Verdict for the Plaintiff it may be amended by the Judges, ministered and entered on those counts only to which the evidence applied.

Dougl⁴ 302

Robt⁴ 329

Dougl⁴ 301

Robt⁴ 330

Geo⁴ 110

Dougl⁴ 677

Salk⁴ 533

Geo⁴ 514

Bab⁴ 335

Geo⁴ 134

Dougl⁴ 101

Salk⁴ 478

460⁴ 52

Geo⁴ 612 144

Salk⁴ 53

Geo⁴ 101

Bab⁴ 141

"Verus." if any evidence is as given on the bad counts. Then a Verdict "de novo" must issue. -

So a mistake by the Clerk in entering the Verdict. may be amended e.g. in the damages found for

And a Special Verdict may be amended as where a question to be decided material by the Ct and clearly proved is omitted. See D⁴ 513-18

But in a Criminal Case a Verdict whether General or Special is said not to be amendable

See 11 Mod. 84. Doug⁴ 302.

Finis.

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Questions discussed in Monk Hall with
the Arguments and Authorities annexed and the
Opinions of Judges Reeve & Mr Gould.

An Infant sells a Horse for 100 Dollars and ^{Agreed}
receives the money. He afterwards avoids the Con^{tract} ^{2d. 1812}
tract, takes back the Horse but retains the ^{Value} ^{page 217}
money. An Action of Recovery is brought ^{1st. 2d. - 264} against the
Infant can the Plaintiff maintain the Action? -

No decision - Judge Reeve says it will lie, when
ever the Consideration can be identified. However lie,
see Title Contracts - "Infants"

Simmers, for the Plaintiff. Law never was intended
to injure in any case. ^{3d. 1802} Dallat.
He says that the Privilege of Infants is to be withheld
only and not a weapon of Offense, i.e. that the Court
do mischief by his Privilege. We did not know now
whether the Jury took in the verdict that he was an Infant
the last. Proved, and his Privilege cannot in Equity be
extended to this. ^{86 Dainford & East 330.} The Law
has extended the privilege of Infants very widely. but
the Case is not in point - the animal was accident
ally hurt & there it was a Contract and it was carried into
Court but had it is a fraud.

Wells for Defendant. If a person puts himself in the
power of an Infant he must suffer the loss -

Ist I say a person can never mean less than to do
harm and there is a much reason now that if Court
be recovered. ^{Review 279. 383 a 311} 2nd

2nd That Contracts of Infants by manual delivery delivery account will not voidable. In 3 Coke Digst 581 It is said that if Goods are sold by an Infant and delivered the Contract of the Infant is not voidable 3 Coke 139 - This may extend as wide before as to

2 Coke Digst 334. Personal property - The Court in Power consider property that has been exchanged. The same principle held in "Casper" Power could not lie because the property is transferred. Whether it be transferred by exchange or sale I say Power will not lie.

When Goods are delivered to an Infant he will not
3 Coke 140 have to be an Infant neither Power & Conversation nor any other action will lie.

8 Coke 335. The Contract of an Infant can never be turned into a Rock to subject him. If one delivers Goods to an Infant knowing same to be such without Power nor Conversation will lie and it is the same as if it were money.

Burgess for Dft. Wiles has made all the difficulties in a person owing Infant money on a promise that he would execute a Mortgage. He refused and the person cannot recover certain. It is in vain to demand back with an Infant. How can Power be maintained? What constitutes it? There must be a voluntary act. There was no work in the Infant for selling the House - none in taking back the House. There was in any voluntary act? What will support Power. If any action would lie it must be brought against

Ellen v. H. for Dft. The cause in 8 Coke is clearly noted

not Law. If an Infant affirms himself to be off age with an intention to defraud he is bound by the Contract. Chitty 140
Law & Co. of Law will confirm the Contract. I will allow what the author has said, i.e. that an Infant is not bound by the Contract. But there are say there is no Contract. We have decided that Rover would be in the case of a Servant. These things are necessary to constitute a Contract. 1^o an unlawful taking. Chitty 140
2^o an unlawful holding. 3^o an unlawful deten-
tion. - here is an unlawful detaining. The action ^{is} for the loss of Rover is to recover damages and not the thing itself. ^{In the} ^{Wells}
specified. I say whatever Contract there was was rendered absolutely void by his taking back the horse. There is therefore an end to it: and there is no Contract. The Infant has the ^{the} money in his hands. In law is no plea to an action in Rover. All the Law reads is on Contract and therefore not applicable on every principle of Law he must pay it back. The Law will still shield him tho' Rover will lie agst him. ^{Wells} in reply. denies that altho' the Title 913
Infant declares himself to be off age he is bound.

John Stiles steals Goods in Massachusetts September
convey them to the State of Cork when Jan 3rd 1812.
Noted knowing them to be stolen, receives and ^{Posses} ^{by Judge} ^{the} ^{same} ^{Wells}
conceals them and he is indicted as Accessory after ^{the} ^{same} ^{Wells}
the fact. Can the Indictment be maintained? ^{joined}

Pointed for the State. The reason that a person steals Goods in one County and bringing them into another may be indicted in the Second County of

Mass. B. 17
6335.5-13

applies equally here. Now that even now night & con-
tinuall of the Piracy is as much a wrong, and
may come under the word "Cripit" as surely as
the first taking - That the Indictment lays the
Offense to have been committed agst. Stat^t Law
yet of the facts alleged and proved by the Grand-Cow
stated on Offense at C^t the conviction may be
Sustained and the Ct will not suffer the Criminal
not to go unpunished if the Dft is discharged
then he can be punished no where. The manus-
tions in Massachusetts shew the "animus fraudandi"

It is said we have no means of determining
what acts constitute Theft in Massachusetts. I
say we might enquire if it were necessary. But
there is no necessity. the crime of theft is local
but the goods were broug^t into this State and still con-
tinued to be the property of the owner and law we
ordained that as long as he continued to hold them
the Piracy is as much a wrong as the first and
may come under the word "Cripit" as much as
the first taking. The mischief that would result
from the establishment of a principle whereby a
conscience in stolen goods might be carried on
with impunity, is incalculable. A Dept^t of Inspec-
tion might be here established and gangs of desperadoe
Mass. R. M. Villains in the neighbouring States employed for its
2 D^r - 10 Subj^t work

And Pardonably of all these author-
ities the principle of the C Law dictated respecting
Concubinage must prevail

The Object and Consequence of because the Admiralty had
conflicting jurisdiction of the High Seas and their Bars no
danger of a failure of Justice. - Now there would be -

Raymond Senior for Dft. The Dft can not
be subjected on our Law it will not be contended
that one having Stolen Goods in France could be
punished having carried them into England. be
cause it may not be contrary to the English Law

Where a man is to be punished in one County
he is liable of the same punishment in another
County as the other as they are under the Laws of
the State. ^{186 Blk.} ^{23 Rep.} alike in different States. Can
our State take the ^{of Justice} from her
and punish infractions of her Law instead of
punishing them herself. The Article 2 Section 2
of the Constitution will not permit it

A principal must be indicted and found
guilty before the Attorney can be compelled even
to answer. - he might be indicted for a misdemeanor ^{Blkone}
or on the principles of C.L. as the principal
has not been indicted.

Raymond junior for the State. The Con-
stitution of N.S. does not take away from this
State the right to punish the prisoner at the
Bar. And the jurisdiction of a Ct is not to be
taken away by implication. 2. The prisoner
can be indicted and punished here as well as also
in Massachusetts. It is because the prisoner might
be punished over where he goes with the ^{as} Ct. of

I need no say that he should go at large for, can he
not be twice punished. Every Conscience &
the Report is a fresh wrong to others, however
and to the intention of punishment was far and
exceeded. It would be no example to the poor
and helpless to convict him - the answer is
that a person in England convicted in the north
would be no example where he was convicted in
the south.

Was a Tenant by the Curtesy intitled
such an Estate at its Forfeiture upon attaint
or for Treason?

Wills The estate of Forfeiture for Treason
48 R. 381 in the forfeiture all his Real and Personal Estate in
Act. - 431 possession and of apprehension thereof and expectancy.

Was the Husband such a right as is forfeitable. See
20 R. 127 has some right. After a Child is born nothing
can defeat the Husband's right. The Tenant has
a right after the birth of a Child which he had not
before - he acquires the fee and it is therefore forfeit-
able. He can make a Settlement.

13 Edw. 6. 1601 a. of 15. If the Husband is good
C. 32. 320

Debtors Every interest a man has is for-
feited for Treason both at C. Law by Stat. not only
possession in his temples but Estates forfeited likewise
are forfeited. So Deacon is forfeited. This generally and
forfeited was intended to avoid forfeiture were forfeited.
If the Plaintiff had any interest in Lands then it is forfei-
ted.

foultiable. It is said by Blackstone that the inter-
est and profits he has in Land be confiscated. So Coke
says the only objection that can be is that his Tenancy is
not consummated till the death of the Wife. It is said
by our Opponents that the husband estate only in his Wifes
right not in his own - this is wrong we have proved it to
be contrary.

Ellsworth. Blackstone says he begins to
have an Estate on the birth of the Child. Wells says
he has a fee. I say he has not. Welles said he could make
a Testament in her. In Douglass 315^o it is said the
Husband had a fee in himself. These are formal
requisites to enable a man to be Tenant by the Curtesy
- there must then be a death of the Wife. Cited see 35^o
He Tenant by the Curtesy must have 4 requisites his
estate must depend on a Contingency. Winnick 102

If a Tenant takes a Bacon see Dallas. Harrow 36 Rep 3
has a right to make a Testament and does not it Cited 30 & 8^o
is not foultiable. i.e. the right is not foultiable

The Gentleman has said that for Reason the Tenant
in Dower forfeits the Estate - and draws an analogy
that a Tenant by the Curtesy forfeits it. in
the Irish case he has an Estate in his own right
in the last he has not.

James Goulds Opinion If I were to form
an opinion on the principles of the C.E. it would be
on this proposition. that one may forfeit by an offense
which existed at the time the Offense was com-
mitted; there may be a diversity between a man
between a mans liability to forfeit and that which

way Conway. If it were true that a Tenant by the
Curtesy could make a Settlement that would bind
him after the Consuuation of the Estates then
it does not follow of course that this might be for
futed. What do the Husband forfeit by this ac-
tained? Why it was what he had at the time. - He
could be a forfiter during the joint life of himself
and wife. As the difference the death of his wife can
make it that by the Estate is his during his life
but before he could have it during their joint lives
the rule that one cannot forfeit what he has in the
right of another refers only to Trusts or an Es^{ee}-tace
the Husband during the Coverture was not Trustee
for he has the whole right during their joint lives
the Husband at the time of the Act had a Right
during the joint lives of himself and his wife. Then
he forfeited all he had lost the wife is dead and at the
right he had determined by his death. There was
then nothing which he could forfeit. See Bacon
The Husband at the time of committing this could
only forfeit the Estate during the term of their joint
lives and the latter of the Estate under the thing con-
cerned it no longer.

October 1812

Can a Master justify a Battery in defence of
his Servant?

Nov 1st 1420. +

Mc Gould decided he could if on
no other ground on the ground of Duty.

Affirmative Petreall 540. Hobom 426. 527. 4. Hawk 131
Bacon Master & Servant Law 124. 5.

A of Boston on the 1st September wrote to B Collier 8th
of New York telling him that he would give him
10,000 Dollars for his Ship then lying in the harbour
of Boston. B wrote an answer on the 4th and put
it into the Mail telling him he might have
her at his office; this Letter arrived in Boston
on the 8th Sept^r and on the 9th the Vessel was
destroyed by a Terrible Breeze & who he could
in the City Office. monst - Can B. maintain
his action?

Wells for A. What is a Contract? See — Com. Com. 22
2. Rome 149
A contract must have three requisites now-a-farre sub-
ject, parties able to contract, and parties willing to
contract. All these are to be found here. See ¹ Pinckney - Kao, p.
A contract is an agreement of the minds of the parties
The agreement of the minds of the parties was at the
time B wrote his Letter. To constitute an agreed
ment there must have been the effect of another Person
to it. The Dft assented to the contract. If I want to
send to J in New York telling him I will give him
10 Dollars per yard for a piece of Cloth he has in his
store if he affords I am bound. See ² P. 131 a 81.
See an effect may be given to a contract. From
the moment the effect is given the parties are bound
by the contract. Here there was an effect given. An
offer made by one and accepted by another becomes
a contract. ² Rome 452. Here there was a Note or
memorandum in writing. The contract was sup-
posed by an effect given. After a regular due intitut^a

Complaint 210 - a delivery the property worth in the hundred
 £200 - 230^l. In this case after the Letter had been written back
 by P. S. he says some other person had offered him
 a higher price for the vessel than it had costed P. C. and
 went with him. & &c. If he had at all had a man
 named Groves agt them. 3 P. R. l. 653. an action on the
 case. - Both parties are not bound neither is P.
 one is bound (and undoubtedly he is) the other must
 be bound. If the debt has accepted by sending a Letter
 Notice 98 in the place he is bound. The Contract is either good
 or bad ab initio. From these authorities it appears
 undoubtedly that if the goods were transferred the debt must
 bear the loss. It is a clear rule of Law that if the
 parties have once agreed on a mutual effect to the
 contract. If there was a contract at all it was at the
 time the debt was made the contract. There was no doubt
 about applying nothing but this inevitable accident and
 would the contract stand being enforced.

Downey to Doff. This case is not considered
 created by any of the rules, respecting Contracts. It appears
 in the whole proceeding that there was no Contract, and
 especially at the time the contract for the debt. It says -
 He has cited many authority but they can have no
 effect. The effect of it makes a contract but
 the agreement must be mutual. The contract
 is not concluded till the party making the offer
 - the acceptance. Whether cases the counsel for the
 P. C. has adduced prove the ground that both parties are
 present at the making of the contract. Here they
 were not. If there was a contract the Declaration will

would not be sufficient to enable him to recover.
 There must be made an agreement binding both
 money paid in part performance or earnest paid, or
 delivery offered, in a time fixed for performance
 None of these had been done in this case. And the
 case the gentleman has adduced, has some of these
 circumstances attending them that do not exist in
 the present case. It was impossible in this case to have
 made a delivery - the vessel was destroyed before the Deft.
 received the answer. A contract in which it is agreed
 will be such an one as that either party may main-
 tain an action upon it. It is also hard to say that
 such a right exists here. There can be no per-
 formance however on the part of the Plaintiff and he
 gave the 8th day the ship was destroyed. The Deft.
 before the 8th day could not have maintained an ac-
 tion and if he could not the other could ^{not} at that
 time, nor at any time afterwards. An acceptance
 when made by writing or signal or gestures must
 be such as are understood by the other party. If it
 is not meant that the other party should know
 why would not a neutral agent do? but it is
 clear that he will not do. See on what Contracts
 an action may be maintained in Conn & Conn.
 No action can be maintained without time of
 delivery, it is said, tho' the property did not. In this
 case it could not be.

Ellsworth for Deft. There is no Con-
 tract here. The analogy mentioned by Mr. Brown
 Contract for a House. Covenants by the Deft. to
 leave

leave all the ~~Cars~~^{Cars} in as good plight as he found them. and they were blown down by Storm - In the Cars there was a contract but here I say there was no contract & therefore the Cars can have no leaving. There is one case which bears a strong analogy. If I offer a man 100 Dollars for his Horse now at any time before he accepts, my offer of money must stand. There must have been a meeting of the minds. there was none here. There must be such a meeting of the minds as to enable the parties mutually to have an action. here there is not a reciprocal right of action. It would open a door, to fraud or injury. Here there was no meeting of the minds. therefore there is no contract. After writing his letter he had no power to command the Captain of the Vessel to draw her up close to shore & if while she might, ⁱⁿ likely, have been safer. But if he had been answer, as it is contended by Mr. W. he was bound the time of his writing his answer. he could have commanded the Captain to have done what he pleased with her.

Mr Gould's Opinion. - As the Declaration in this case is wrong. it should have been on a Special agreement. - this declaration is on a gen^d action of Abandonment - that cannot lie but where there could have been a count on a quantum ratiocinum My opinion is for the P. J. T.

This question came up before the N.Y.C. It never was discussed or a final decision given. All the substantial arguments have been laid forth by the Gentlemen this evening. The agreement on the Diff was that he would give 10,000 Dollars for his ship. Suppose that it has sent the money on the Letter it would make no difference in the Case. The Case presupposes that there was no default on the part of B, since who seeks the remedy. The General rule is that the non-receipt of a tender or payment or some failure to be performed or performed before the parties separate will not hold him; it is impossible from the nature of the Contract. The question is not when the right of action accrued but when the Contract was made. The Contract was closed by B putting his Letter in the Mail. The Contract was completed and took effect from the time B put his Letter in the Mail. It is not say that the meeting of the minds of the parties come together. The putting of B's Letter into the Mail is what closes the Contract previous to that it is no answer - he might have put it in the fire. An Offer on one side and accepted on the other becomes a Contract and either by tendering performance might bind the other and from that moment he has a right to the property. A right previously acquired is defeasible without performing who would enforce it. As soon as the Contract was accepted by B the property was transferred from the hand of B to acceptance which

which was from the time of putting it in the mail
The reception of the Letter there by P on the 8th
could not alter the case. The Dftt Counsel
have said suppose the Letter had miscarried or
had never arrived at them could not have known
that B ever had accepted his offer. Suffice it to
say in this case the Letter did arrive.

A B of N York entered into a Contract in
Conn in pursuance of which he made a
Promissory Note payable to B or order in
the City of N York. The Note was given in 1810
when Notes were not negotiable by the Laws
of Conn, tho' they were so in N York. B indorsed
the Note to C. An action was brought in Conn, in
the name of C the indorsee of it the question
under the Qn P staled the above facts appeared in a
case stated. Can the action be maintained,?

The principal arguments of the affirvative were
that the Laws which the parties had in view at the
time of entering into the Contract must be adopted
by the Ct who afterwards try the action. Now say they
only question in this case is to discover whether the
parties when they entered into this Contract had in view
the Laws of Conn or N York. The circumstances being
both being Citizens of N York, and the Note being made
payable there is sufficient to induce us to believe
that the parties had referred to the Laws of N York.

It was insisted on the Negativd that C could
have

have no recovery in this Case because the C^t gave him credit they must do it according to the Laws of New York which all I suppose know nothing about. That at the construing Contracts the Lex Proscript would in many cases govern. Still they conceived that this was a Case not properly falling within that rule.

Edes Dig. 48
2 Com. Law. 508
1610. 137.
Foster's Dig. 100
Wolter's 100
6 Do. 143
3 Blackf. 448
3 Dallas 370
2 Kern. 395

The Gould's Opinion. The only question in this case is whether the Laws of New York or of Conn^t are to govern. I conceive this is a case properly falling within the "Lex Proscript" i.e., that the determination of this Court is to be made up from the Laws of New York & of some of the unwritten Laws of this State. When in Contracts of this kind they are to give such Construction to it as will give the Obligee the remedy which he would have had if he had the action been lost in the Ct^s which the parties had every reason to expect it would have been lost, when they entered into the Contract. If it was expected an action would ever have been lost, I think the authorities well settled upon this point. I am therefore clearly of opinion that C can well maintain his Action and we are to decide according to the then existing Laws of New York. —

A becomes bail for B and B escaped into another State, where A pursues him — retakes him and brings him back. B sues him for False Imprisonment. Can he maintain his Action? —

Raymond for P^r. contended principally that

1812.
Mass. 322, 351
Root 107
2 Wad. 214
75 Reg. 228
Tr. L. pag. 40

that the Legislature or Court could not grant any power to extend out of the State - insisted that Geo
c'st was local and that there could be no Contract
for fugitives bail is given when the principal is not
present. When then is the Contract? Every Contract
must have 2 parties to it and a subject matter -
and here the Party who was the Subject matter did
not perhaps even know of the Contract Geo could
then be no Contract. The different States are Sovr
ign and independent - if a person escapes from the
Sheriff and goes into N York he can't take him
without an escape warrant.

Poached for Dft. The right of bail exists told
1st that of controlling the Principal for the purpose
of summing him. 2nd In case the Bail does not
summon him and pays the debt, that of indemnity
from the Principal. The Law implies a res
pondent obligation on the Principal and supposes
that he engages therein. These rights are neither
of them local but transitory. Suppose the Bail was
to bring a suit agst' the Principal in N York upon
the terms of indemnity which the Law implies in
all these cases would the party defend to say the original
process in which the Party was Bail would not ex
tend there? But upon principles of Law and reason
it would be as good an answer in that case as it is
to the claim of the Bail in this case to contend and
confine the power of his Principal in a foreign
jurisdiction for the purpose of summoning him
This is laid down in all the Books & that the person
bailed

lodged in the custody of his Bail as Gaoler over him 1 Hawk 140
 We find also that Principals are to be surrendered — see 3 —
 up to their Bail tho' they abscond to a place where it is 2 Hawk 214
 privileged from arrest. An absconder under
 the keeper of the Savoy may be bailed up on "Habes Corpus" 13 Brum 339.
 and surrendered to his Bail. Afterward in the
 custody of the Sheriff and confined for Felony may be 75 Rep 220
 bailed up on "Habes Corpus" and surrendered to his
 Bail A Bail may take a Bankrupt prisoner 14 H. 238)
 bail during the time of his last examination

See an analogy to the case of Bail in — — — — — 55 Rep 210

It is said "Bail have their principals always on a
 string and may pull it when they please, and surrender them 231
 back in their own discharge they may take him on
 Sunday, and confine him till next day and then sac-
 runder him all over and still can do with an escape

We find many analogous cases where one has
 the right to confine another which must settle
 the question A Parent Master or Guardian has a
 right to confine their Child Servant outward and
 tho' they remove into another State this right con-
 tinues. Should either of them escape from their power
 the Parent or right holder may pursue and retake them in a
 foreign state. Children whose parents are unable to
 support them may be bound out by the Overseers
 of the Poor. Poor Debtors may be affixed in Ser-
 vice and if they escape their masters may pursue
 and retake them wherever they are to be found.

The Constitution of the S. art 4 sec 2 clause 2^d says —
 no person held to service or labour in one State under the

the Laws thereof - escaping into another shall in Consequence of any Law or regulation therein be discharged from such service or labour - but shall be delivered up on claim of the party to whom such service or labour may be due. A Case has been decided in Pennsylvania, where a Master may take his Slave escaping from another State merely on Provo-
cato Proposito. Mr Raymond has said Proposito
is Local. I admit it. But it does not follow that the right of Bail to continue his principal tho' this right
may arise from Proposito is subject to the same Pro-
tection. I have said that the Law always recognises an
implied Contract of indemnification on the part of
the principal. I repeat it. It is said that there can
be no Contract, for the principal frequently is not
present - This very rarely happens - he frequently requests
a person to go bail for him, and then the Contract is
effected. But in case he does not, but acts accordingly
he acquiesces in the contract, and implicitly gives
his assent to it. It is then from the Contract
that the Bail has a right to continue his prin-
cipal - the Legislature don't give the Bail this power
it has been contended. A Bail may break open
doors &c in the same manner as Gott can do to
make an arrest to take his principal. And
 286 Pk 120 he can break even other doors, for this can be
done on original arrest, and much more on an
arrest by the Bail. A right to personal prop-
erty to a Procurer action whether founded in Contract,
or

or Tort, or a right in one to Continue the person of another, acquired under the Laws of some Government it extends to, and may be exercised and enforced in any other civilized Country, when the facts happen to her. A contract made in France may be enforced here if permitted. A note given in Conn., may be collected in N.Y.C. Hence a right by one to know the person of another is also transitory, these are strictly analogous in this respect and rest on the same principles.

Will's Bail Dft. - cited 2 cases, in point see -
 This Case is like a Bailment of Goods, a man may peaceably take his Goods wherever he finds them. Then the bail man peaceably takes his Goods wherever he finds them. Another reason to prove incor-
 testibly that it is not the Sheriff which I admit is to
 say that gives the bail this right is that process
 extends only thro' the County, as far as the jurisdiction
 of the Ct. extends, and yet the Bail may undoubtedly
 go into another and take the principal, just as
 a Sheriff may go into another County and take an
 escapee.

7 Johnson 145
 3 Day 489

Judge Rev's Opinion, was decided, that
 the Bail could take the principal. When a man
 is arrested he is in the custody of the Sheriff, and by
 & L the Sheriff must Commit him, but now the
 man may be admitted to bail, and he is delivered
 into the Bondman's care and if he shows a dispo-
 sition to run away the bondman may arrest and
 imp-

inhibit him. The point is - whether he is prisoned? The Sheriff can't go into another State and take him by virtue of the authority of this State. But if a man's horse is taken from him he may take him in a peaceable manner where he finds him. The Sheriff generally takes a bail & price, but it is of course except to shew the people of that State that he is pledged to him. But not that it gives him any authority. He may take him in another State because he is pledged to him and the same rule holds with Bail. He has a right to punish because he is pledged to him. It is not by virtue of any authority from the State. The Bailiff certainly has a better right to take him than an Officer has to quash who leaves him without paying his bail and forfeiture on such suit and takes him. He ought perhaps to widen himself Scimus to take his bail price for if he had no evidence of his right the people there might think the innocent innocent and rise up and protect him from any by the Bailiff.

McGould is of the same opinion & says 10 years ago this question came up in Virginia the 5 B&R Rep 172 was applied to and gave his opinion which is now to be found in 1 W&W 5 B&R Rep 172. He says if he is taken and taken as a 虧缺 in a neighboring State the Officer may justify his right and take him in a neighboring State. He

A Vessel insured agt^t the perils of the Sea only, is captured by an enemy and carried out of her course: then recaptured and after recapture, is lost on her way home by Tempest: are the Insureds liable?

Powner vs. Affe This is an action to recover a Policy of Insurance agt^t the perils of the sea only & the title can be said on this case while a defendant is enabled they may take any defense. - therefore Cut. 2. which they can Bell^t make? This is the Captured which took the right to her away from the owner and causing worth discharged the Insureds.

2. The defendant on account of the capture - either of these will support them. They may take up the change of property. I will therefore notice that. The Law is laid down by Marshall - it must be decided by the Marine Law of Engl. - mostly come or Stat^t Law taken from a case in 2 Bul 1693 decided by Ed. Mansfield. See Marshall 4204 &c. Some writers follow Brodies and say that the property is changed whether 24 hours after capture. This is decided by that who say the property must arrive within the fortified places if now there appears that no man is established - it must then be decided by the Marine Law of England. The property by the Law of Nations does not become diverted from the owner until it comes within the fortified places or within them. Fleet - but I can find no decision of it - and it must be decided by the Marine Law of England. with the Stat^t.

Pointed out the property is not changed until she is condemned. See 2 Bul 1693 - another case Willow 74 & 1693 was not condemned for 4 years and was adjudged to belong to the original owner. - in 2 Bul 1608 a sum of money is laid down by Ed. Mansfield "no diversion of property says he unless condemnation" therefore in this case there is no change of property.

I trust - Content that there is no deviation. See Marshall 4081 If the defendant can be justified by saying there is no deviation she would free the Insured from liability. See the different causes that will justify a deviation in Marshall 409 There was a ship having been run on shore the defendant and some other Insureds are not discharged. Re Bot & Pake 181 Scott & Thomps - son - a case very similar to this. Many cases might be cited to shew that a deviation will not discharge the Insureds.

4 Dallas 274.
2 Bul 1693.
2 Bul 1693.
313
1647 & 1681
3 Bul 1693.
1647 & 1681
Long 3 230
2 Bul 1693
62 - 1698
1647 79
Marshall 418

Insurees when they have done it this necessarily but ^{will} cost 200.
The cost is to be attributed to an immediate and not to
any remote Cause. This is, however, insisted in the Rule of Insurance
See Marshall 44.18. She deviates in it - Rule 21.2 requires
it kept as given by Master on an ordinary Coast and then
Captains the Insurees were liable tho' they was not right the
parts of the sea. The Capt said the sea has nothing to do with
it - It is the immediate and not any remote Cause which
must send the cost. If there is no deviation in this case
but this surely I think the Insurees are liable

Precise for the Legislature. We don't care for the
change of property, - It can never be a question between the
Insurer and Insuree to say Marshall. The difficulty in
deciding with this in point is that no insurance is made in
this way. the common mode is to insure agst. every
thing except fraud. I shall give 8 reasons in this direction

1st They deviated from the Coast - The course is
very thick with the Law makes in constraining a Policy. See
"Marshall 343" Every word of it is to favor its meaning.

2nd The time of the risk shall not be lengthened. The
Books all agree on that. the reason, insomuch that the
Insurer calculate upon the length of time Marshall 400.

3rd That the conditions that are excepted in
the condition of Policy, are not complied with regard
to the one exacted of the risk "Copper 300". If she did not
sail on the day the the night before her voyage began still
the Policy was wanted. In this case as she was insured only
agst. the sea. there is an implied condition that they are
not to suffer from any thing else, in that case than the
Insurer were discharged

4th With regard to altering the nature of the risk -
5th Rule 580. Many a strong temptation to change or deviate
is sufficient to induce the Underwriter (this is
contested by Marshall)

6th See Marshall 201. After present ship had de-
viated one mile to avoid a ship of the enemy it would
avoid the policy because this was not what she was in-
sured agst. The only reason reason which the Piffs
can give is that she deviated on account of necessity.
I hold it as a principle, that they never can deviate in
any case for their own benefit when it is not for the
Insurer despite the they may deviate for the benefit of
the Insurees.

Ellsworth

Ellsworth on the Negative. It has been contended that Captain is included in the terms of the sea - aised, & hazard. Considerback and Releas. but is contained in Peake's however as it has not been mentioned I shall say no more about it - If Captain amounts to a total loss aised Marshall 428. As soon as a Captain takes, & leaves the Cap turned - means abandoned - and come on the instant. - for ~~Marshall 307~~ Marshall 307 England there is in that Geo. 3 which says a Vessel is not charged for duty till condemned - but here we have no such Stat. it must then be decided on principles of C Law and usage of Nations. In France a Captain is a loss "en instance" see Marshall 484 note he cites pag 427 - that Grotius said that Goods taken according to the Law of Nations, are considered as Captured after 24 hours. Ed. de launay said. says Marshall 427, and all others, that Goods are given a day when all hope of recovery is gone. Here there is no hope of recovery - She is out of the reach of friendly Power, miles from home. If a Vessel is detained by an Enemigo, it amounts to a total loss. this is a strong case See Marshall 434 - and over this Stat is at the end given up. De launay says whenever a Ship is captured the crew may abandon Biblio 896. Even a Captain of a Vessel insured interest or no interest amounts to a total loss. Marshall 424 altho the Captain was it legal it amounts to a total loss. The Insured are just liable on a prc of Deviations. D'arouze says it must be on a prc of necessity - but I contend there is no necessity here it has nothing to do here because the insuranted was only agt. the perils of the sea. If a man had been in a storm and went out of the way to anchor till it was over this would have been on a prc of necessity.

Hazard on the Afft. Fuller has said that he gives us very argument as to the change of property. Ellsworth takes up this ground again they thus are at variance among themselves. I shall leave them to settle it. I will proceed to show that neither ground will support them whether it is on the Law of Nations or C Law. Capture does not alter the property except an end to the voyage till it is carried "extra primitia" and condemned. Marshall 428. This is also recognized by De launay in 2 Biblio 690. - The doctrine is absurdous it would be no diff than that law gives a right. If the property was once diverted it could not be recovered after the capture. They might if they had chosen abandoned it and it is only on the ground of a misapprehension

desirous of it ad'g off that they can abandon. ^{"Coff. St. 237."}
to shew that they could not abandon. If Captain per se terminated
the Voyage what would become of all the principles of the Law which
would govern Carriage & Abandonment. In every Voyage there must
have been a terminus ex peregrinando and a terminus ad eorum. Since
she afterwards proceeded to the terminus ex peregrinando I say there
is no deviation without it is voluntary. ^{"Blaupau 408."} Therefore
there is no deviation here.

All Gould's Opinion "The policy is only w^tg^t the
the vessel is lost. the ship was lost by a fault of the sea
the loss then was in consequence of the risk incurred against
unless they can shew that they are exempted. I am of opinion
not that the business is liable - this is no change of business
only on a/c of Captain they may abandon. and if the captives
and horses in the underwriters are entitled to her.

It is said there has been a total loss. here it is sufficient to
say whether there might have been an abandonment or not
in Case she was insured w^tth it - there has been no abandon-
ment. There can not be a deviation without it is vol-
untary and had the Voyage in the same as she was no re-
sponsible (according to law) Wherever there is a deviation
occasions as possible the business is liable. Suppose the
immersion agt. the faults of the sea and Captain both, and that
was Captain and escaped yet here there cannot be such a
thing as a deviation. There is no deviation in the Case
of the loss incurred by the Captain & or last the faults of
the sea. It is indefensible to say that Captain is the cause
it was only a very unusual and unmeadeable cause of the loss
that is said if there had been no such loss there would be no loss.
Truly if the horses had been lost they would have taken
no cost. Suppose a Capt. in Captivity who incurred agt.
a total & inmeadeable accident (for instance) he has been condemned
he is still liable tho he might say he would not have been obliged if
it had not been for the circumstances of a Capt. in Captivity
then in the immediate cause of the loss for in it is not sufficient
that he is exposed to the loss because of the loss he sustained in the
is still liable. Suppose a risk insured agt. Captain & himself
they were exposed by start of weather and Captain it would be
no excuse to say that the loss does not depend on him and they did not
incurred agt. it. If the loss was not the immediate cause. The ques-
tion is was the pursuing her Voyage? The question here is was she
lost by the faults of the sea which pursued the Voyage insured? She
was in the case in Bosc Pd in in point. If she cannot be said to have
was no deviation then the case runs on the last point. Was the pursuing
the Voyage insured agt. it. I say she was the horses are liable" - -

At with a declared intention to defraud his Creditor he conveys his Land to B who was ignorant of the Conveyance and the fraud, but signing a Deed on record, agrees to purchase it paying him the full value and claims little by his Deed. Is a Creditor of A liable on the Land. - Who has title?

There would appear a general rule of law that in either of these cases a Creditor can recover his Debts & Goods v. C. & C. v. D.

M. Gould, London. " There are no cases to be found in point & it must be deduced from analogous cases. I am of opinion that B can recover. (i.e. C in Ex parte) The Deed took effect before the time of the delivery before the Register to be recorded, so from that moment the Grantor had no further Control over it and it has been so recited in Book that the Recorder cannot even deliver it back to the Grantor after recording it if there is no Gazette. If the Deed took effect (and I think it did between the parties) it took effect from the time of delivering it to the Recorder, and the Grantor can do now afterwards nothing with it. If this is correct and I think it is the question depends on these two, suppositions. 1st

1st. It was fraudulent at the time of delivery, for there was not only then no Consideration but there was no agreement at all. The Conveyance might have been good between the Grantor and Grantee but not so agt. Creditors. It was also attended with the badge of fraud, that there was no meeting of the minds of the Parties, and the Grantor could have effected it if he had paid any Consideration agt. the Grantee but not agt. Creditors. The existence of an adequate Consideration does not per se make a Conveyance good, and so a Conveyance of Lands without Consideration except agt. Creditors is good.

2nd If the Deed was fraudulent at the time of taking effect it however can be made good by any subsequent facts, — and so is the maxim, "The Deft. took the Deed as a mere instrument of his right with all belonging to it." If it appears that the Deft. at the time of the Conveyance was made was ignorant of the fraud and of the Deed and in fact his master may never have known any thing of the fraud. But in Law of Land he must have known at the time he paid the money that the Deed was fraudulent. He knew that the Deed was executed to him and delivered to the Clerk before he agreed to it or knew any thing of it or paid any Consideration. He cannot prove that he was ignorant of the Land. He knew he was not the purchaser of

at the time the Deed was made that he had never paid, nor
agreed to pay. D. the Deed then could not take effect, and
would not afterwards. But further in f^t of Law he was
free to do so if he chose. If the Grantee in getting the Deed, he
chose did not act as the agent of the Grantor the Deed would
never have taken effect, for it is the Grantor's business to get
the Deed recorded, and therefore in f^t of Law he has the
agent of the Grantor. One party may be the agent of the
other, and then he acted as the agent of the Grantor, and it may
be considered as the act of a third person, as if C had first
owed the D. of A for B, who knew nothing of it, for the law
is, that A might depend on his Creditors named by B and that
the Deed he makes, the act is now for his sake, for a man
just, see Sc. He undid the Deed and thus became a party
to the transaction, he affirmed it, and that this is correct and right
see Newell's *Practical Law*, page 272-57. The Grantor here then
is, this case acted as agent to the Grantee in f^t of Law
This can have, evey^t been decided in this state in the case of
Meacham v. St. L. & N. R. Co.

A with an intent to defraud his Creditors
conveys his Land to B, and B gives him Promissory
Notes for the purchase money, afterward the
Creditors of A come on the Land and recover it
out of B. A then sued on the Promissory Notes
can he recover?

R. Baldwin, for P. The Defendant has said
that there was an unlawful Consideration, but on the face
of his Notes, he has said there was a valuable Consideration
and therefore he should be estopped from now saying an un-
lawful Consideration. To support this see *Ld. Ray* 700 and
2 Robm. 440. this point is well established. The Defendant
says there was no Consideration. If then the Notes were thrown
up and afterward the Creditors should be satisfied out of
other property, and the Land should revert to the Grantor, he
would still hold the Land and not have to pay any money.

The words of the Deed, include him, from saying that he has
received no Consideration. The agreement is, as between
the parties themselves, ^{as it may be} Consideration was
good at first as between the parties and cannot be rendered after-
ward bad. They say the original Consideration has been lost.

2 Blaw. 803	
60 Stat. 270.	
8 Coop. 72	
Patent, 841	
D. 847.	

I say it has not. The Consideration does not pass where the party receives the actual Contract so far as the 20 Day 1873 when it is not obtained by fraud. The reason is that there can be no fraud because by the person who was colluding to do fraud another. He has his remedy on the Covenant of Warranty and Seisin in the Deed and he cannot have it here his only remedy is on the Covenants. He avails there Notes he would have 2 remedies and one would be no bar to the other.

No man shall take advantage of fraud until the fraud was against himself see Root 490. The person to avail himself of fraud must be prejudiced by it. This man can never come into Court and have his own habitation as a defense agst. an action like this in Selwyn v P. H. B. & Co. - The case in H. B. & Co. was where a man had lived with a woman, and he had another wife. The woman purchased Goods and when the man was sued for them as Husband he wanted to come into Ct and said that she was not his Husband but the Ct. said no. - The D.ft. could not think there was an illegitimate consideration, but see Case per 343 where Edmaston says. "No. of well land there and he but where public policy requires it. Plaintiff of course demand that the action should be maintained. Obstacles of fraud must be construed liberally so as not to let the mischief off. If you say the Notes shall be collected you accomplish the object of the Stat. The Consideration ought not to be enquired into. The decline of failure of Consideration don't apply here."

Wells v. D.ft. - The D.ft. does not come in and ask assistance of this Ct. he acts on the defense and with in the Ct. not to interfere. The claim we say is fraud which on the part of the D.ft. The D.ft. says the Consideration is a good one. And says the Consideration ought not to be enquired into. But we say the Consideration of a Note may be always enquired into before it is negotiated back at. i.e. it is not got till it is a note. So far then it becomes as it were a Note of Exchange and if enquired into might work a fraud on third persons, and such was the case which the D.ft. cited from 2d Raymond. The D.ft. says if D.ft. should be allowed to defeat a person by here he might retain the Note in case the creditor could find other property and he would not be obliged to pay a cent for it.

But he argues that the creditor has actually come on the Note and taken it away. The D.ft. says that B. the Stat. makes the Conveyance good between the parties. I grant it. The Contract thus is executed and the D.ft. will not interfere when it is executed and on that ground we don't work the Ct. to interfere here. The D.ft. has said and cited Days that whenever the articles are received. The failure

New Court 3.10
Long. 4.51
D. 2.94
D. 3.70
B. Wilson 3.40

Nile

failure of Conveyance can not affect it. But this is not so, for we have been repeatedly told in our Lecture that as soon as a failure of Conveyance even if the money is paid it may be recovered back in Fiduciary (But this can apply only when the person did not yet know what he intended to get and could not apply here) The Prof. said the Defendant has his money on the Covenants - but I say where the Defendants say the Law is Conveyed, for so much in his money Notes a Judgment on the Notes is a title to an action on the Covenants. The Prof. has said a man shall not take advantage of his own wrong and is so you of the case of a man living with a woman with his wife. But that cannot apply here for any Court would enforce such a Contract on the unfiled Creditor had given him. After answering these few of the Prof's arguments I shall proceed to say before you my reasons why the Prof. should not recover. State it to be a fact followed that any Contract entered into between them, however cannot be enforced see 33 & 34 of 33rd. These follow all are made in Consideration of marriage, and the father either says to the intended Husband I can not afford to give you so much as I have agreed down the subject of marriage. Father though there be you must give me a bond, for so much as I will break up the materials and the young fellow over this bond can never be ennobled for it would tend to defraud third persons. The Law goes on the intention of the parties and therefore if their intention was to defraud and no one can deny but it was, the Notes cannot be enforced.

Another question that must be the Prof's
money is that when other parties are involved like the Prof.
will never be liable to enforce certain Contracts "Cauper 74".
Bentham said when the parties and the law involved the law will
never be liable to assist either and in his Case says he "Profess
and Condomis dependent". Standard dictionary of Downey 3. 603.
Prof. W. read from or Case in "Cauper 343" he did not find
it in enough. Mansfield Opinion is in our favour. Pleas is not
strictly ground, but the broad ground is that when two have
been bargaining a Law of their Country the Law will not affect
either.

And another question which if nothing else would
most decide this question. You demand that is made to be
enforced it shall never be construed so as to effect a fraud.

One more substantive ground. We wish you to consider
the intention of Contracts so that you must first get at the
intention of the parties, and then take into consideration all
the circumstances. And the parties also determine of making the
Note the most distant idea that they oblige over be collected?

we had this taken down now in detail if the Land should be taken
away as it has been P. M. you must then be free from the intention and all)

Wm. Bent, B.A.

P. 20. Contd 370

and all the circumstances. See, that there can be no recovery on these Notes. Again, if the Debtor is in all cases to recover back money, when the Consideration fails - then how is it that there can be no recovery on the present? But could anyone touch the money in Hobart's hands, and then leave him, multitudinously & safe. The only thing which could possibly hinder his recovery in such a case, would be that the Debtor had incurred and held the money by Judg. of Court. and therefore hope the Ct will not grant that Judg. and by so doing, prevent the Debtor from being defrauded.

P. 21. Contd 370

Blundell in a Case from 2 Wills 341, saw 2 Wilson 341, said a Deed could not be given a Slating Person Notes as the Consideration, it must be of good and Valuable Consideration.

Judge Reeves Opinion was in these words, "I have entertained this opinion with respect to fraudulent Conveyances of this kind that the circumstances of the Land being taken away from him can make no difference. But, if the Land never had been taken away, and these Notes were a mere Contra -

It is said the Law won't regard persons in prae dictis - it won't help either, and therefore no damage should be shown to either Party. I consider the whole Law to operate on one side as a matter of policy. The Law bears all on the Grantor. - It don't bear on the Grantee at all. - If he granted away his Land, if he didn't want it, & the Grantee may, had it in defiance of him or the ground that B is an honest man, but to furnish B with the Land bears solely on him. Now, when there is a fraudulent intent on the Particular in giving these Notes, still it makes no difference. It has respect of the Transaction at Court recovery on any ground - whether the Land was taken from him or not. because the Law wishes to punish it fully. B is a mere Caliph. My opinion therefore is that it does not give a recovery on the Notes. The majority of the Professions may probably agree with me - the question is as where decided."

Mr Gould's opinion. I would premise that the circumstances of the Grantees having lost the Land at the suit of Creditors, can make no difference. The Notes are good or bad absolutio. It makes on every principle of Law whenever there is a fraudulent Grant in this way, neither party can recover. Whenever the parties are in prae dictis then the Ct will not afford either aid the reasoning is "in prae dictis nullus est condicis defendantis". This you well observed in my opinion grounded on C. Law. But I think the Stat^t has made a different rule. - it says among other things, "that

that all such bonds - suits - judgments - executions, or "complaints," made to avoid any duty or debt of others shall (as against the party or parties) only so far as debtor duty is so evaded as to be avoided than he is to be relieved void." —
The therefore is good between the parties - no one will now hold back that the Co. may a man is good and well remain so if prudent and wish to avoid it - well now as the Co. insurance is good. I contend that the Notes are likewise valid by the express provisions of the Statute. —

A makes out a Completed D^red, with all the requisite formalities &c and delivers it over to B at an Est^row, to be delivered to C at his death. At the death the H^r of Law is in possession, and C after receiving his D^red & B's witness against him can recover & C in other words it there a sufficient delivery, then to make the D^red valid?

This opinion has authorities in other cases than cited in the notes to Code Civil 36 A Days Edition, also Code 32, and Rules and Regs.

Mr Gould's Opinion. — The question always recurs as to the effect of the D^red thus delivered as an Executed & whether it can take effect in the lifetime. There has been some confusion in the Books on this question by confounding the appointment of agent to do a future act, (or giving a power to Attorney) and an executed act to be done in time by a future act. It is clear if it creates a power of attorney to B it makes a D^red different in his name and it is being it is executed. B cannot make it the power is revoked by his death. But if it is for this reason now "to be done in original act and if it were made out it would stand thus "I do B give you my Bargain and Sale to him of that very time he is dead there would be a bargain and sale to him after the death of the grantor and there would remain nothing to him if a dead man. The case is "toto caelo" when the act, which ought to create the Estate is incomplete - Considered in the lifetime of the Grantor, and nothing but a Conservatorial act to be done afterwards. As in the question above the D^red is made out by the Grantor, and the intent then to become after his death is delivered it over to the Grantee. It is a Conservatorial or Commissarial of the act begun by the Grantor. This may be done and the D^red takes effect. It takes effect by operation if it could not

not taken effect by relation it could not take effect at all.

But in the case of a power of attorney it is different. And you well find this principle running thro all the cases of this kind that where a Deed is delivered & this is whenever there is such and ineptate act to be consummated by a future act it must take effect by relation "ut res magis habeat". But secondly there is such an ^{ineptate} consummating act - as to spouse a former Covert See Goldsmiths notes at p 262 &c. But suppose there is a legal instrument at the time of making the Deed as if the owner is out of possession so that the case of Conway and at this time delivery is here as in Conway but when he recovers possession and the Deed (Scarr) is delivered over the Deed does not take effect in relation from the delivery into the hands of the person as in Scarr but it takes effect from the time he recovered and came into possession. & the doctrine of relation applied here the Deed would be ineptate. And this is further that whenever there is such an ineptate act to be consummated by a future act the Deed must take effect by relation or not according as it will prevail or not, "ut res magis habeat quam present"

If attached a lot of Land with a House stand ing thereon belonging to B to secure a Debt of \$ 1000 the Land and house were worth 1000 Dollars and A recovered 1000 Dollars agt B but before he could levy ^{on} and obtain a Title thereto C burnt down the House which was worth 500 Dollars so that he could obtain only the value of half his ^{on} and B had no other prop erty. Can A recover of C as for an injury done to him?

The difficulty in the case if there is any, is that at the time of burning the House the title was in B for which he could recover. The question is can A also recover?

Decided in the affirmative by Judge Reeve v. G. The question is can there be a recovery by A. What answers does it? It is said B who owns the Land can recover. no one denies it. By the attachment it gets noticed. Suppose this is so. Perhaps C committed the wrong & can sue. What is the injury here? It is that the value of the Land is destroyed - the owner can recover. Will C be entitled to recover? It is said that if B recovers of C if A can recover of C he would have to sue.

Authorities
were cited in this
case except
forwards the
effect of an aff
tachments

twice. It is clear that it could not recover of C if he has recovered of B; a man is not allowed to recover twice... but had given injury to B and B offered it liable to pay twice. Hisobjection that he has paid once stand that other brought his action. For suppose a prisoner released. Second. Also he is liable to the Sheriff and to the creditor both may sue. If the principle was that a man could never be obliged to pay twice for the same thing it would be a clear case. A person cannot be liable & subjected for a double. But it so happens that a man by his misconduct injures two persons and the Shale not both recovered. It was decided a man is not liable to the extent of the injury to both for what he was liable.

This is his last Will and Testament & I wish Black
and Co to take care to see it is also delivered to Mr. J. W.
Walker his Possessor and the House at Law being taken
of Accountment w^t Mr. White Callon & None of the
Summes mentioned to the Will do / prove it the House at
Law subjects to him as being interested. The question
then is can he be admitted. or can a Will be good
which is witnessed by one of the Devisees ?

Suck for 87th	
Death 28 th	40
Cause 87/1401	
1. Plan	417
2. Long	133
3. Plan	428
4. Long	432
5. Plan	13
6. Long	365
7. Plan	1253
8. Day	41
9. Night	514
10. Night	558
11. Day	184
12. Night	-
13. Death	133
14. Day	35
15. Cause	11
16. Day + Cause	61

Decided that he might be admitted & admitted as a witness - and that his "will was good tho' witnessed by one of the Deacons and another disinterested witness". Affirmed by Mr. COOKE - in these words "Sir, you now have been tested in this State. It is so obvious that I can't give an opinion at any thing. I have to say generally that I am perfectly satisfied with the care of Windham & Cutham" in regard "it is entirely secure and that it were as well executed.

The opinion of "Eden's" (See it in *A Day*, the review
genous is now satisfactory. But Sodha at Pader & Hindoo's
"Baraa" is inexplicable. The Case *Hastley 83* (cited in *A Day*)
was decided the "Obra" was a trademark. The Circuit
Chief Justice was opposed to the decision."

Not on the 1st Jan'y 1812 makes his Will and died
but "in his Cards" he left his Estate on the 1st April for
lauing he purchased a tract of Land and on 1st August
following made a Codicil dissolving & canceling his sole
Property but executed with all the solemnities required
by the Statute of Frauds and Regis'rs. so if any one sues
city he doys nothing about his purchase Land after
the date of the former Will - after his death his Executor
takes possession of this tract of Land and the both
as S. L. brings an action of Ejectment agst. Land. The
question is at this Codicil is sufficient & publication of
the Will to pass Lands purchased after the making of it.

Decided by Mr Gould that it is in their words "now
I would furnish you with such as otherwise whether the
Codicil is annexed defective to the Will or not the journal does not
being well executed & being so in Contemplation of Law it takes
this to be the Codicil. You too have had some Considerations
thereon. Well then the Codicil will execute inasmuch as a
republication? I think it will. The usual objection is that
the Codicil was added to personal property. It can &c. no
weight in this objection. Suppose the Codicil was Concern-
ing "Real Estate" and were executed it is allowed usually
that this would be a sufficient publication. but why
not more so than a Codicil of personal property. It is
the Consciousness of all the Codicil that you will and
concluded it and has no add or otherwise it shall be general
property. The Deposing effect of the Codicil don't bear on the
question at all. I often think there is an absurd
want of executed according to Law and in Contemplation of
Law annexed to the Will and the Testator recognized this
from the time it took effect from the date of the Codicil

It is indeed for Murder and for Peace he pleads
in his informed action. Now that he was convicted of
a breach of the Peace for having assaulted & battered
F.W. for the murder of whom he was accused and

Am. Phil. Soc.	100
Raw. Dec. 365	
Sawdust	526
Lodging	1
14 days	26
Swing	330
Tr. C. D.	23
62° - -	652
Ban	554
14 days	467
443. - 494	
7 Rep	481
2 Wm	100
4 hours	135
 For the Dept.	
Pau. Dec. 653	
24 am	624
4 paint in the car	
2 year	732
2 paint in the car	
600 liter	463
Amber	641
bone & Rep	388
Pallet	818
Videx	620
Pau. 101.674	
Cashier	-
500	
Pau. Dec 544	
104-3-84.90	

W. S. & C. 18
 3. Klone 3307
 Knast 5324
 " " 523
 Kugay 36, 52
 " " 3185
 Klone 325

Deficitation It appears S^t H^d had suffered languishing some months.
1 Hawk C 25^d of the same drowning and loosing for which the said
S^t H^d 11th June action was b^r & a recover^y had. The question
posed, C 32^d whether this former recovery is a bar to the present
Indictment. & it is decided by all Gould to be so.

S^t a Proct^r comes at the house of B^r an Informer
and delivers him his Instruments. when they are re-
turne^d to him in the morning he says there is a
short time before his admission 100^l Dolly taken from them and sue^r B^r. It is now
S^t M^r 1^o 98^d forward to prove the circumstances and he is de-
fended by S^t J^r 2^o 6^d ad no. Can he be admitted as a witness?

1 Hawk 243
Woodm^r 598
Imperial 134
Espl^r 2^o 408
Auth^r for fact
Dugdow^r
M^r 2^o 184
Lanc^r 2^o 73
the 4. 362

S^t a Gould says. There is no privity or
which he can be admitted. he is not only interested but he is
a party in the record. He can under the off^r of Winton
(Ms^r 2^o 48. 2^o 685 6) in execution to the rule and
even that case has been questioned. But if he can be admitted
from the mistake of the case. It must have
been to prove the nature of it. But this is not such a
case. The present case bears no analogy to any of these
cases, where the party was admitted from necessity. The rule
of Evidence is that a party cannot testify and this rule
must hold good here.

Auth^r for P^r
33 Rep^r 2^o
15th June 1^o
15th July 300
Ms^r 2^o 25
3 Hawk 142
Hawk 232
P^r May 730
2^o 2^o 23
2^o 2^o 100
J^r 2^o 513

A Rich^r Blackmore to B^r and his wife with their children
Enclosed^r of Warrants & P^r calls to C and C to D with
like Covenants. It claims the land, and B^r is introduced
by P^r, a witness to prove some circumstances about
the title. D^r describes a certain lot of land his inheritance
on his Covenants Warrants & Deeds. The C^r rejected
it. B^r and his wife stand in the relation. B^r is a wife's he^r and

and thereupon brings a Writ of Garnet, the question is who
brought the suit off the C^t erroneous?

Judge Reeves' Opinion. "It is impossible for a man
to release the Covenants of Manancy - he is a good Willness & man now
there is no question but that they may operate as far as they
operate on the releaser, and any one of his assigns may clear the
Covenants as far as it reaches himself. But the question is whether,
D^r releasing B^r can have the least operation as the Covenant which
was extended to his assigns. Can this release operate so as to cut off
the Clauses of any but the Releasor himself? I concurd that
the releasor cannot operate ag^t his assigns. If I concurd with D^r
only so that B^r can at any time discharge it then the Law is
otherwise. But these Covenants run with the Land into whose
hands it comes, and the work is made and last was much
entitled to the Covenants as the first. Releasor only as a P^r -
son of B^r. Covenants of Manancy may be cleared by any
person who has a right to release, but then can only release
for themselves. I think in this case if he were admitted as
admitted he would be too apt to lean a little. So as to help
out the title. There would be some interest. There are two
kinds of interest in the event. Consequential, and direct
the direct interest consequentially in the event of this question
was decided above. Last C^t of B^r wrote the majority of the
Judges were inclined to my Opinion. They said the Cova-
nents could not be released, and the whole question turns on
this point. Can the Covenants be released? if so he is a
good Willness. I mean can they be released so as to bind
Assigns. Be so for it is admitted that he may release as far as
the Covenants affect himself. I think the opinion of the
C^t here was wrong. The question may yet make a fit
and important part of the Statute.

Mr. Geat's Opinion. I am of opinion B^r is a
completely discharged. If the release had been by D to C
then C could be no longer liable than he would be clear of
liability or interest. Then there the only difficulty is that this
is an extinguishing party. I suppose the question turned on this
that B^r might possibly be liable to C in case C sued him
The Covenants run with the Land and D by destroying the
liability of B^r as between B and D has discharged him and
B^r can never be liable. C has conveyed his interest to
D with the Covenants, and there can be no recovery ag^t
C and hence none ag^t B^r.

Authorised copy
This Ev. 152.
Old Edition 144
Est. 2^d D^r 703
This Ev. 155. 47
D^r 3 300
This Ev. 158.
D^r 163. 170
Book. 498.

Sect. 2^d 318. Whether upon a release from Prison of one of
two or more Joint and Several Obligors, the others can be so
satisfied.

Codice 232^d Lained in Prison, &c. - In an action of false impre-
mentation, it was decided that they could not.
Hooback 70^d on rent, it was decided that they could not.
7th January 20^d on rent, it was decided that they could not.
5 D^d - 341.

4 East 572^d
Jacob Dutton,
- "Furniture
£5,997.11.12
£9,80.45
26 Dollars 236
Receipt Recd
10 February 30^d
1 Day 27^d
2 Feb 27^d
the Plaintiff -

It is decided for forging B's name to a Note
the State Attorney calls in B as a witness, to
prove the forgery. As counsel object to his Com-
petency. Decided in loco Hail that he must be admitted
to the bar.

The case in Number 46, 7 May 1595 & 2 D^d 1226.
say that the note in the criminal case can be given as
evidence in a civil suit. But the case in Number 2255
and 4 East 572, contradict this.

Sect. 2^d 318.
Savine 80^d.
at 5^d.
West Bank Farm
numbers 5 and

A Wife takes up Goods at a store where she
had not been accustomed to deal. Suitable to her
rank and situation in life. Look before making
them into clothes she grows them. Peddler
spans, comes & asks agt. the Husband.

Judge Collier decided the action would lie. -
McGould says it will not lie and that the wife has
not in this case acquired a general credit if she had the
Husband would be bound by a master. He cannot bind her
bound myself on the ground of an apparent neglect for his
duty requires him to supply her wants, supply & satisfy, and
not trade merely for his chance whether she conveys the
Goods onto themselves or not. Sure there is no express language
in this case. If the wife does not make no claim
of them by using them to supply her wants the Peddler
must look to it. But the strong ground is that the
opposite principle would subject the Husband to the Peddler
action.

A gives B his Servant, money to purchase good
at a store at which A had never had any dealings
B purchases them on A's Master's credit. A sup-
posing them paid for uses them. Can the Merchant
maintain an action of "Affirmable" agt. A. &
Decided by Mr. Gould that it would not lie.

In the same Case will follow by the Seller lit
agst. B the Servant, P. Decided by Mr. Gould
that it would lie. The Seller says Mr. Gould may consider
it a contract or not as he chooses. The Servant was not
the Purchaser and holds them after due demand.
Perhaps will not lie agt. the Servant for the Seller cannot
maintain his suit against his own delivery. Neither does it
seem that there will be agt. the Master because it will
agt. the Servant for the Seller enabled the Servant to do
this upon the Master. But the Seller may claim
the Servant either in Person or Affirmable.

Can more than the "value" of a Bond be recd
and should the principal and interest exceed it?
Decided in the Court by James Gould Esq. ^{the 4th} 315.
Laides 2204

overdue	818
Cash	4
3 Wm. 330	
5. Bas. 257	
6th 580	
18 Wm. 3287	

25 Oct. 140	Feb. 10th
25 Dec. 388	25 Dec. 388
30 Mar. 438	30 Mar. 438
22 Sept.	22 Sept.
Oct. 151	Oct. 151
1 Oct. 75	1 Oct. 75
Dou. 49	Dou. 49
6 Dec. 388	6 Dec. 388
1 Oct. 438	1 Oct. 438
30 Dec. 490	30 Dec. 490
10th Jan. 490	10th Jan. 490
10 Mar. 388 430	10 Mar. 388 430
6th Apr. 81	6th Apr. 81
24 Jun. 540	24 Jun. 540
2 Aug. 321	2 Aug. 321
10 Dec. 624 1/2	10 Dec. 624 1/2
10th Mar. 335	10th Mar. 335
28th Sept. 807	28th Sept. 807
3 Johnson 263	3 Johnson 263
2 Sept. 388 84	2 Sept. 388 84
Barn. 1884	Barn. 1884
10th Oct. 1884	10th Oct. 1884
2 Aug. 733	2 Aug. 733
3 Est. 453	3 Est. 453
10 Aug. 510	10 Aug. 510
10 Nov. 141	10 Nov. 141
10th Dec. 81	10th Dec. 81

At an Albany gives a Note to B of \$1000
to New York this Note is barred by the Stat. of Limita-
tions in 8 years, looking ^{back} from the time of issue of
the expiration of 8 years B sues on this Bond in
Court. It pleads the Stat. of Limitations of N.York
on the ground that the "Lex Loca" where the Con-
tract is made governs. Is it allowable?

Decided not to be allowable and affirmed by
Judge Rose recognizing the distinction that the "lex loca"
governs as to the offering of the Contract but nothing ~~more~~ ^{else}.

A wished to borrow 100 Dollars for two years. but B refuses to lend unless he will give him now and legal interest. A then pays B 14 Dollars by way of bounty or inducement and gives his Note 1 Cash 195⁰ for 100 Dollars payable two years hence with legal interest. D^o 233⁰ interest. At the end of the two years A pays B the value of the Note viz 100 Dollars with legal interest 20⁰ Rep 792⁰ i.e. 120 Dollars. Is B entitled for Usury?

The Court of opinion that the Offense of Usury was banished by the Statute of Limitations and of course by the Criminal. On appeal affirmed by J Gould Esq.

Author to Potts
Esq^r D^o 244
Laws 393
12th Dec^r 857
11th D^r 251
8th Feb^r 1080
3rd March 248
1st April 890
2nd May 130
1st June 72⁰
1st July 10⁰
1st Oct^r 574
1st Nov^r 420
1st Dec^r 83
Laws 352

A and B are bound in a joint and several obligation to C. C covenants never to sue at law an action against B for breach of the Covenant never to sue A in law - is it allowable?

Mr Gould decided that the proceeding was insufficient observing that had the Plaintiff sued against himself such proceeding would not be allowable but if judgment had been rendered and A left before action on the Covenant. This to be said is circuit of law but would it otherwise the plaintiff would destroy the contract which does not and never was intended to do so.

1st Dec^r
16th 243.
D^o ... 243
28th Dec^r 352
1st Jan^r 480
1st Feb^r 480
1st Mar^r 480

1st Feb^r 10⁰ in Worcester one year 4th Feb^r 18⁰
such an interest in the Plaintiff may be taken on
Ex^r on a Judgment obtained against him or can maintain
such a suit for taking his House against the Plaintiff?

Mr Gould said "no" for Plaintiff agreeing all were in
concurrent."

A Bills to £5' 20 tons of iron ore by pace to be delivered at the end of 6 months. at which time a re-fuse to perform. Can an action be sustained on this contract or is it within theisdiction of the Stat. of Frauds and Perjuries.?

Mr Gould's opinion is that affirmatively in effect thinking he had the authority settled it but doubts the propriety as the words of the Stat. are "Land or any interest in land concerning them".

in Dft.
26 Nov. 18
1 million £ and
£ 1000 182
£ 1000 150
£ 1000 120
£ 1000 450
For the Dft.
5 East 1002
11th 302

For the Dft.
60 Oct 198
2 Dec 1008
3 Dec 103
2 Dec 1000
For the Dft.
£ 5000 98
2 Dec 248
160 in cont 19
28 Dec 1148
2 Nov 264

A found goods and had been at some expense and trouble with them taken sufficient proof of owner ship delivered them up to B and brought a bill of lading for his trouble and expenses etc.

Judge was given for the Dft. in woolstock Hall, but upon appeal decided to be wrong by Judge Blew.

I was convicted and executed by the testimony of S. H. it is since discovered that S. H. ^{was} guilty of perjury and I was executed innocently. Whether S. H. is indicted for murder - Is he guilty though? Hawk 119.
Foster 132
Each. 44
Blom 195

Mr Gould gave Judge for Dft. observing that he was in "the said place above named" - did not hold in legal proceedings of this nature. And drawing an analogy between this and the case of a person imprisoned by virtue of erroneous proofs. that in the latter case the man imprisoned could not sustain an action of false imprisonment agst. the Dft. in the case where he was liable for abuse of the legal privilege of saying

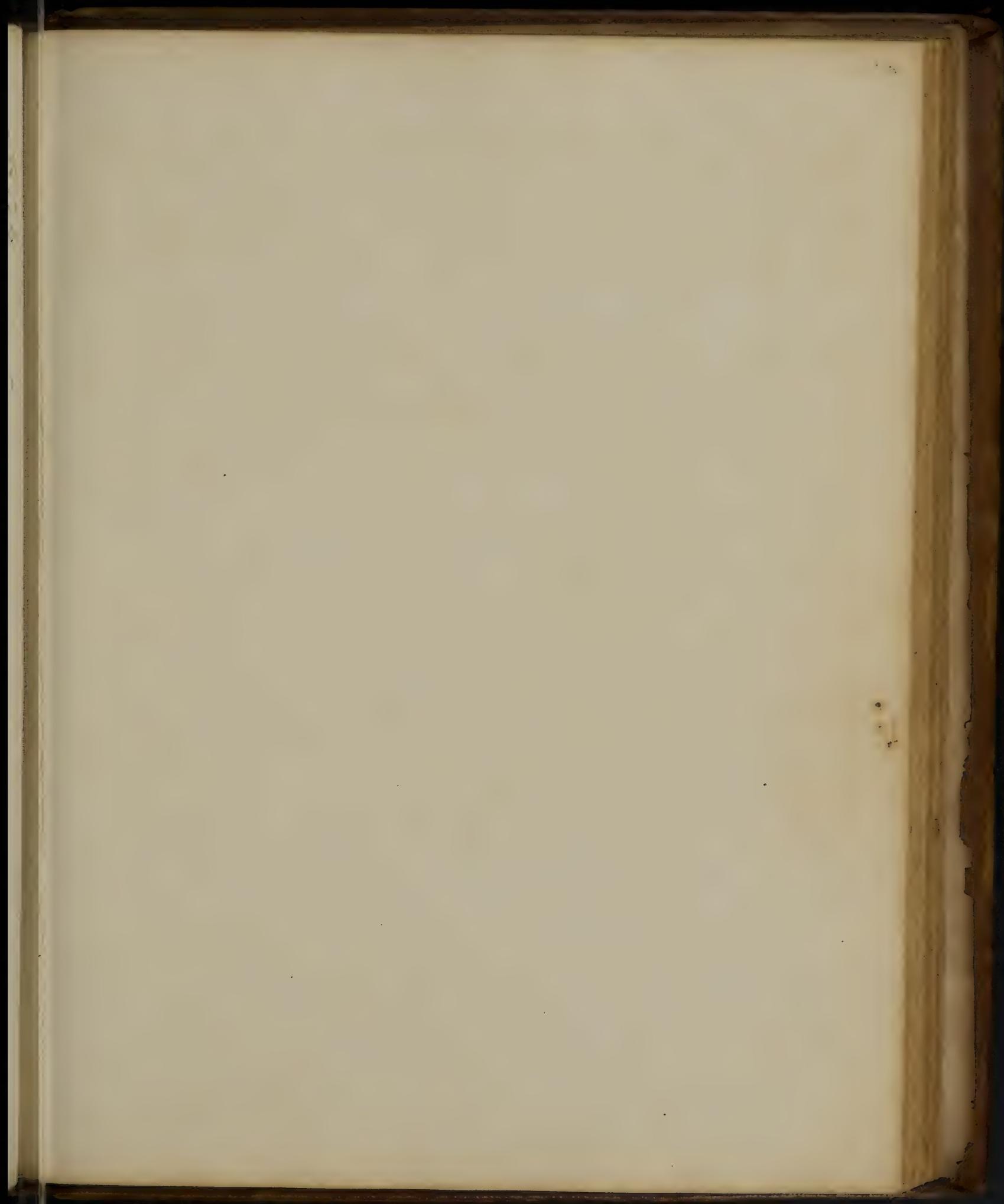
A brings an action of slander agt. B on words not actionable in themselves and wishes to prove special damage B made a former judgment on the same words and can it be inferred? Judge for Dft. affirmed by Mr Gould Eng. journalised.

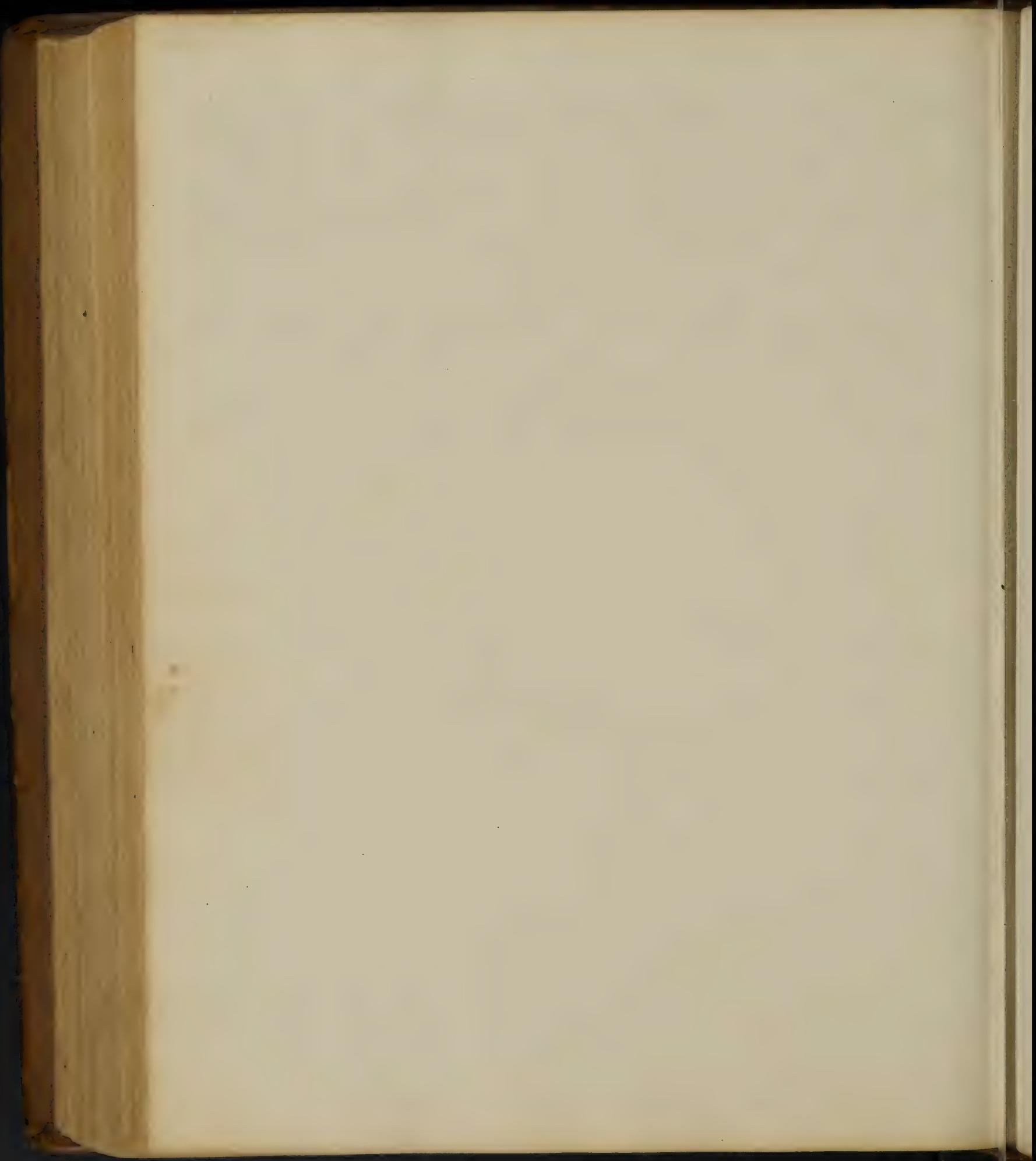
Ebbs 510
Suck 11
Pis 60 35
Inspection
of a sufficient number

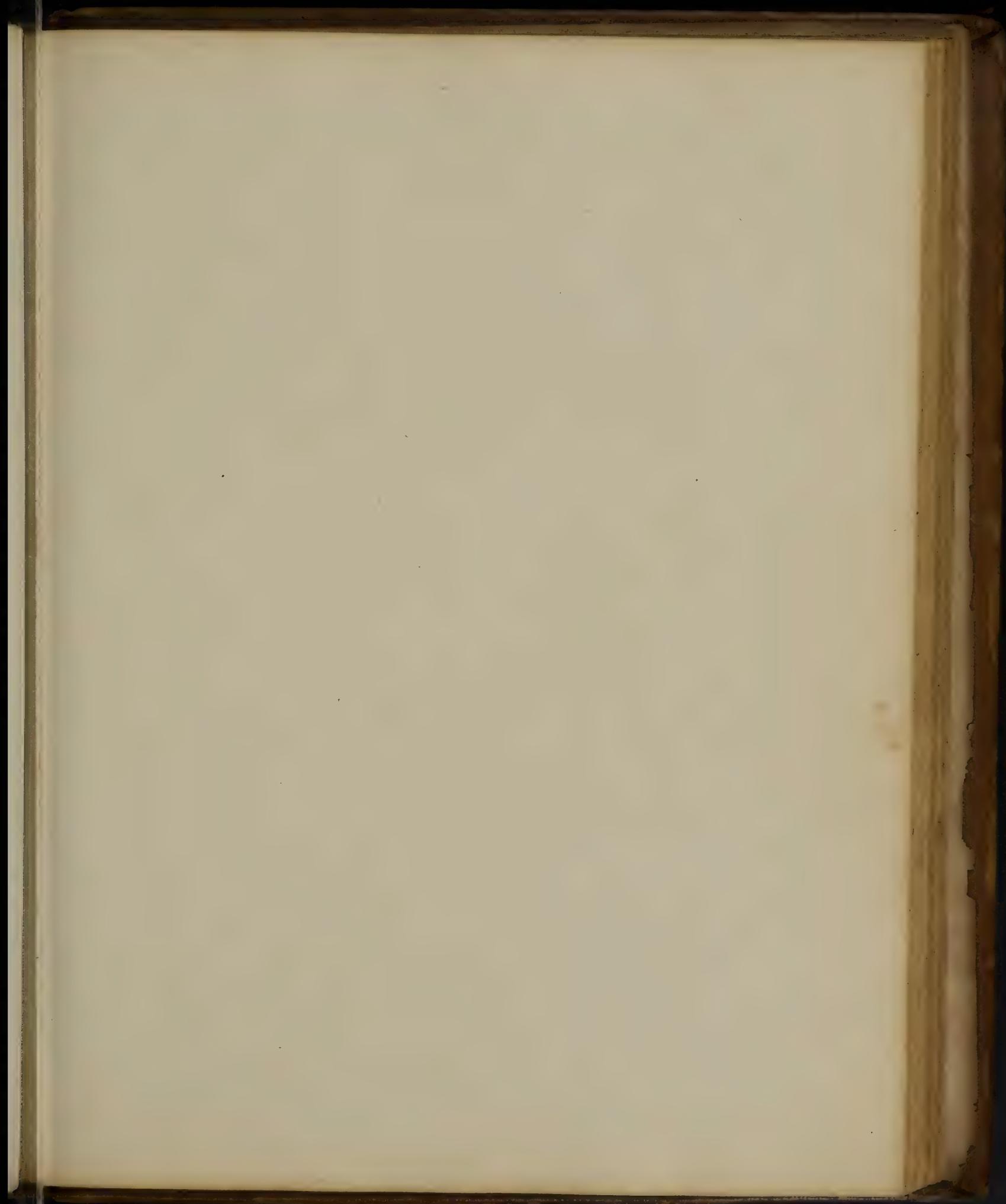
fore P^t.
 3^r Recd 413^d A Tailor suffered a voluntary escape and the
 Adm^r P 611-12 Sheriff is sued and compelled to pay the Debts he
 P^t 3^r L^s 144^d left
 2^r June & East 15^d then brings an action ags^t the escapee. Can he
 3^r Holden 310^d recover? Mr Gould gave judg^t for the P^t the other
 1^r Telwin & 64^d recovered[?]
 2^r Dacorn 24^d point remt in. Considered unsuited.

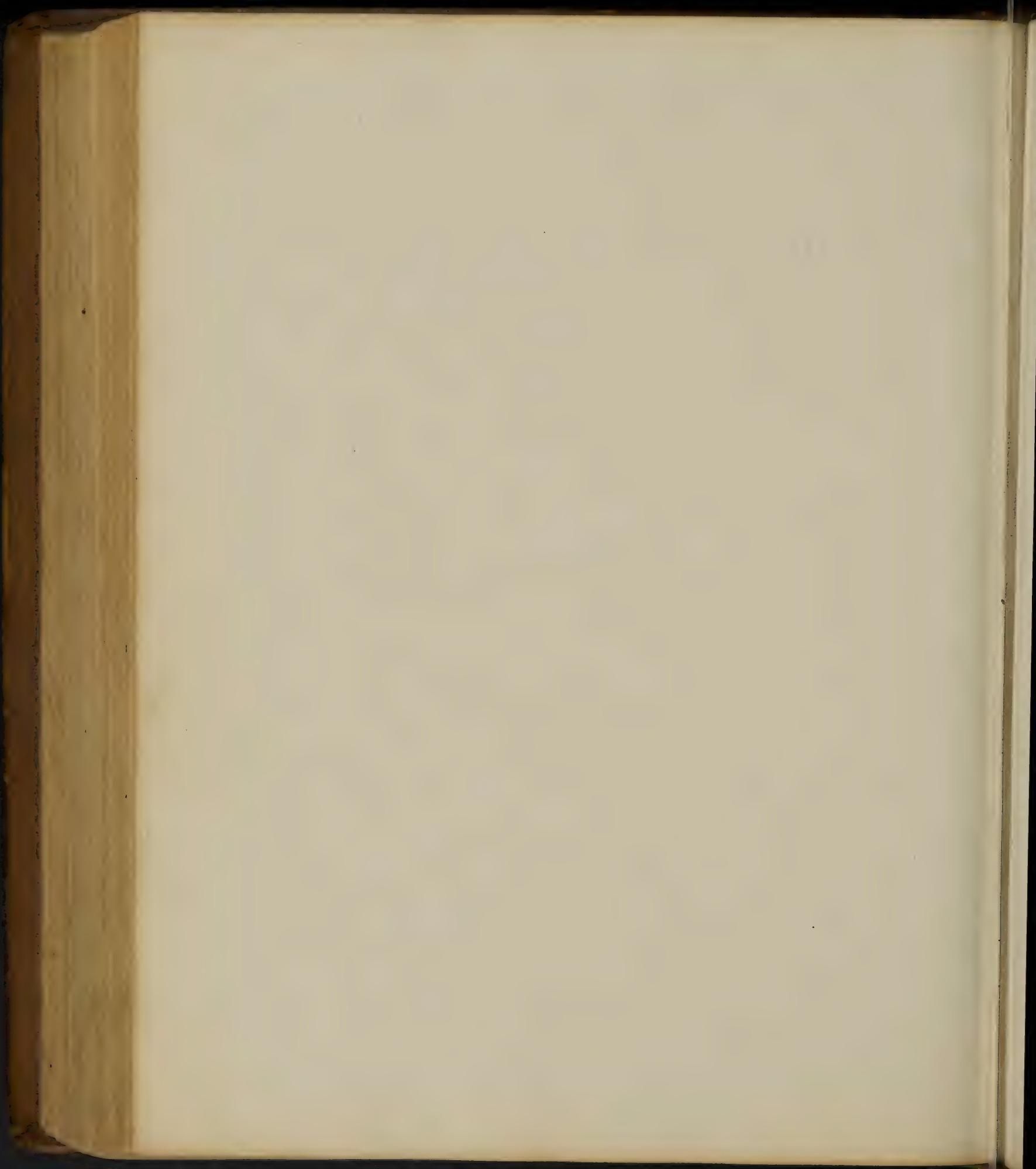
1^r Brown 365^d A finds Goods and loses them and B finds
 2^r them. The owner being unknown. Can A retain
 3^r S^t 505^d said Goods ags^t B for the Goods?

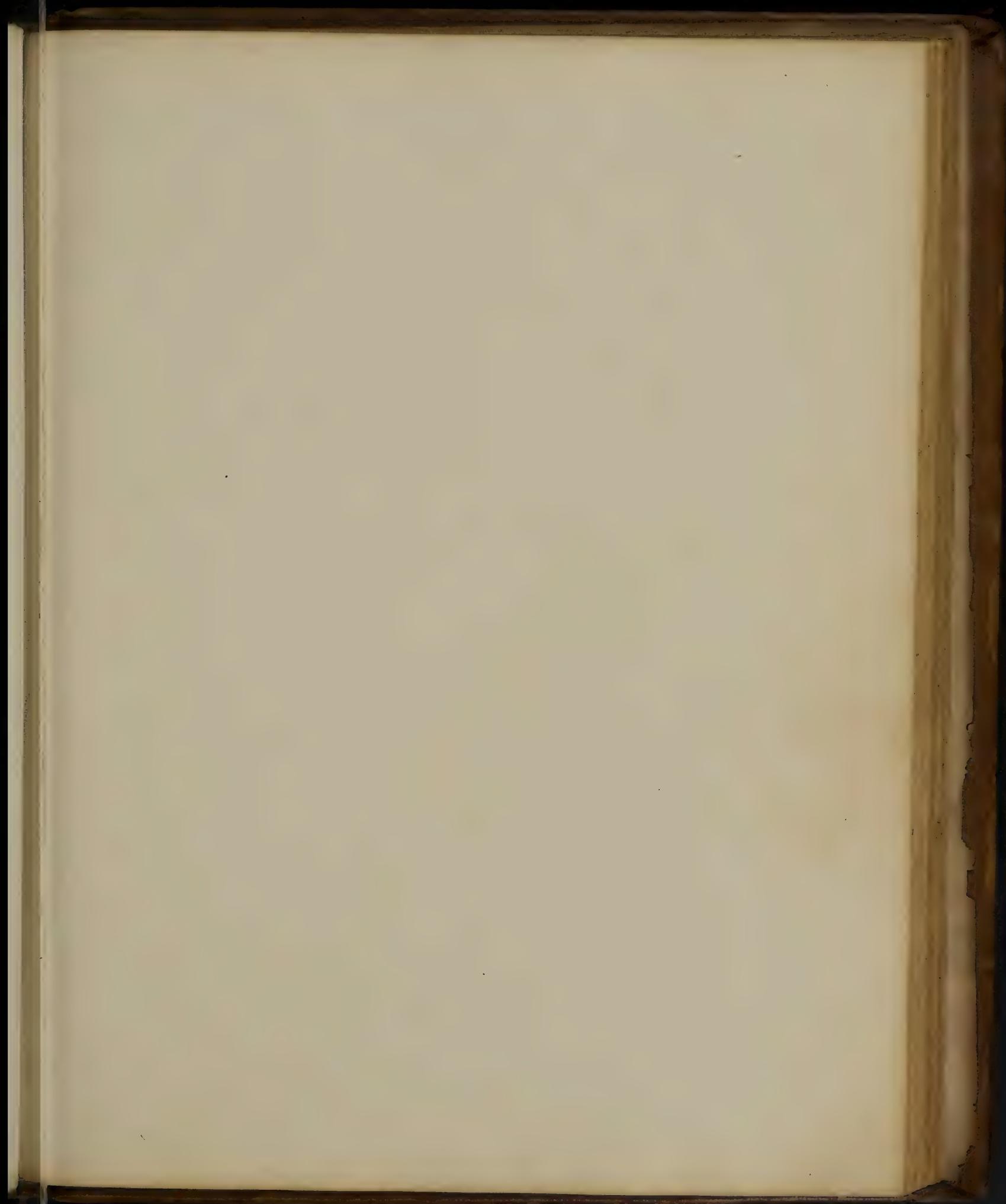
Vol 3^r 2^d Judge for the Adm^r off by James Gould on Board.

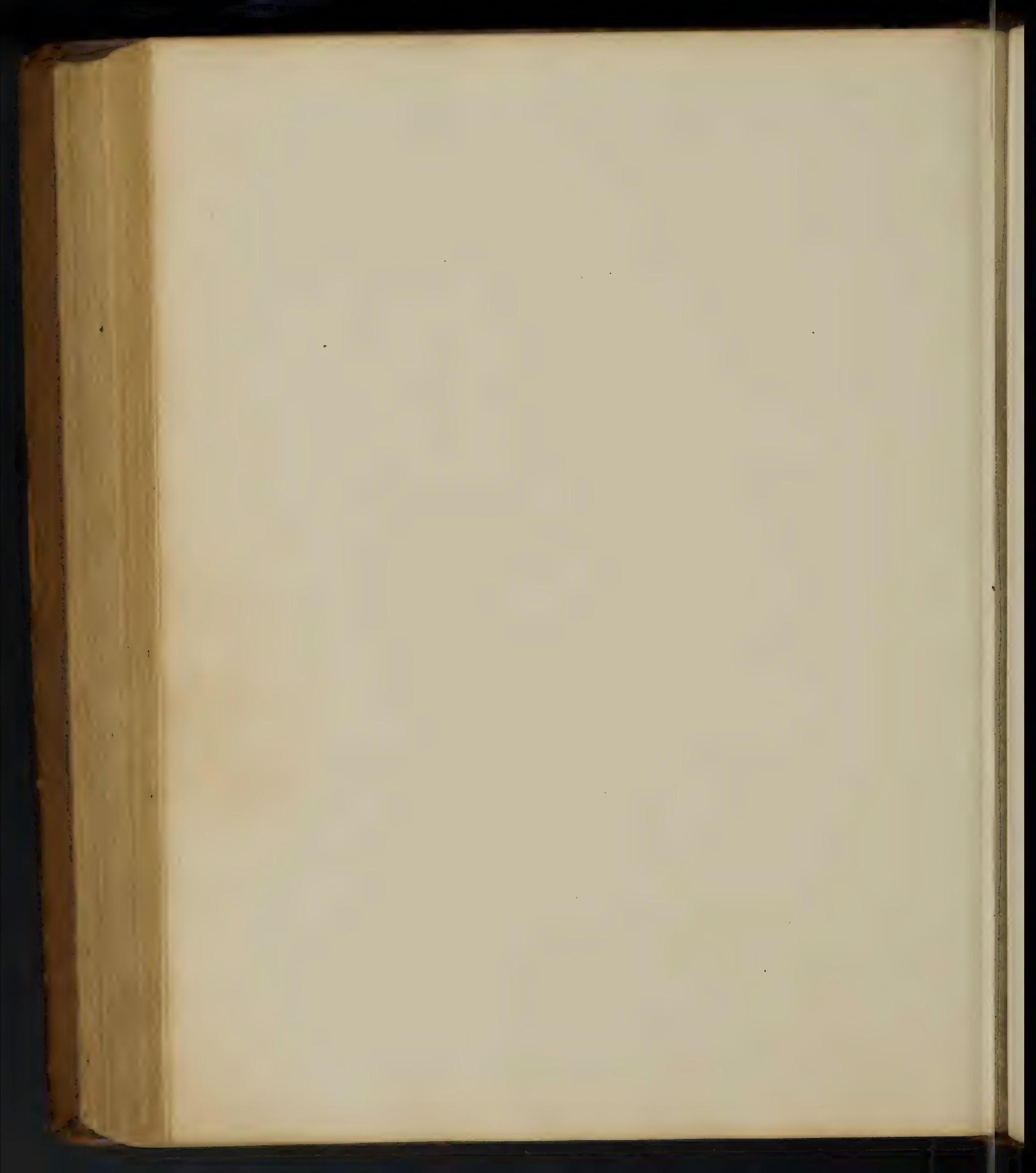


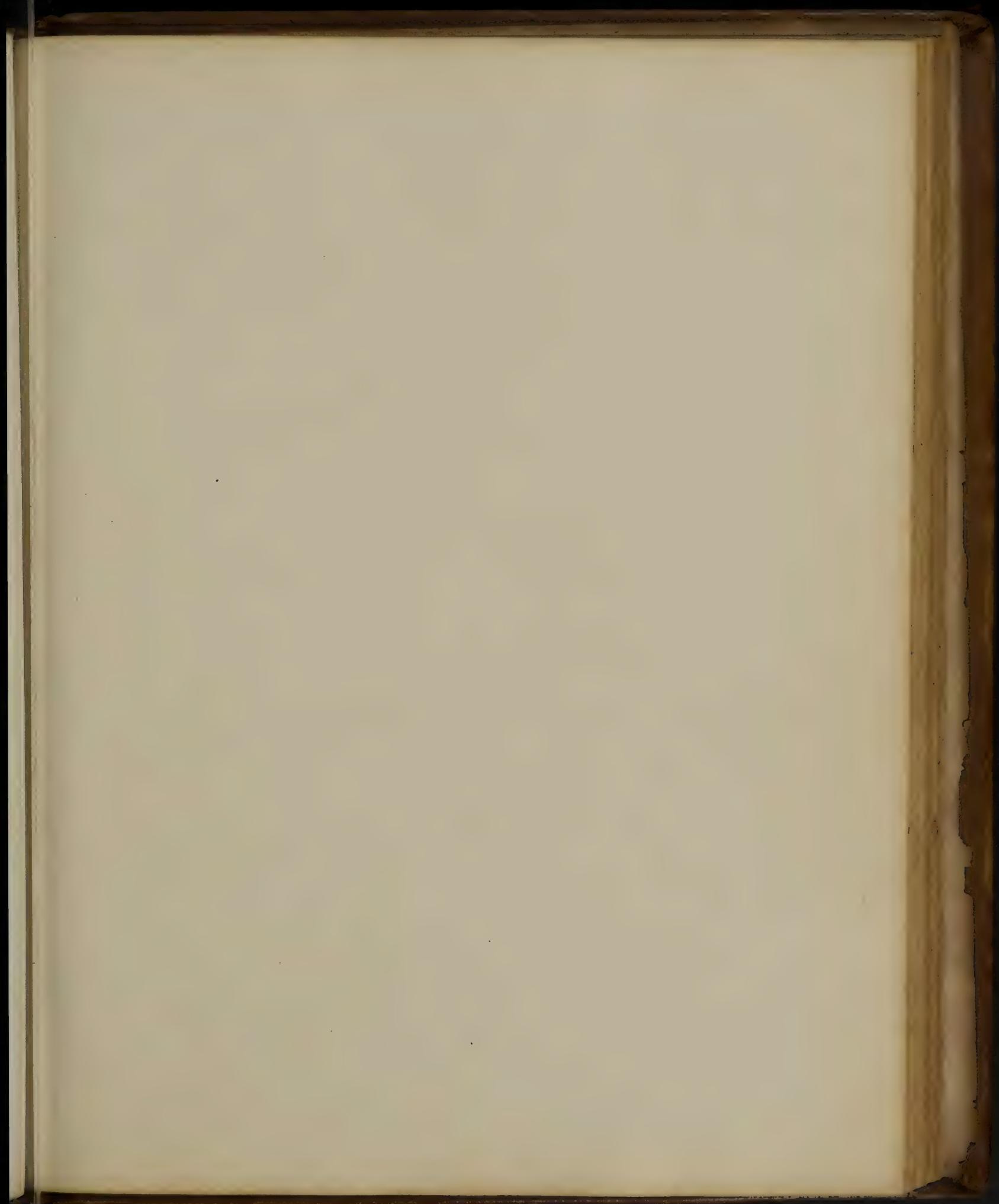


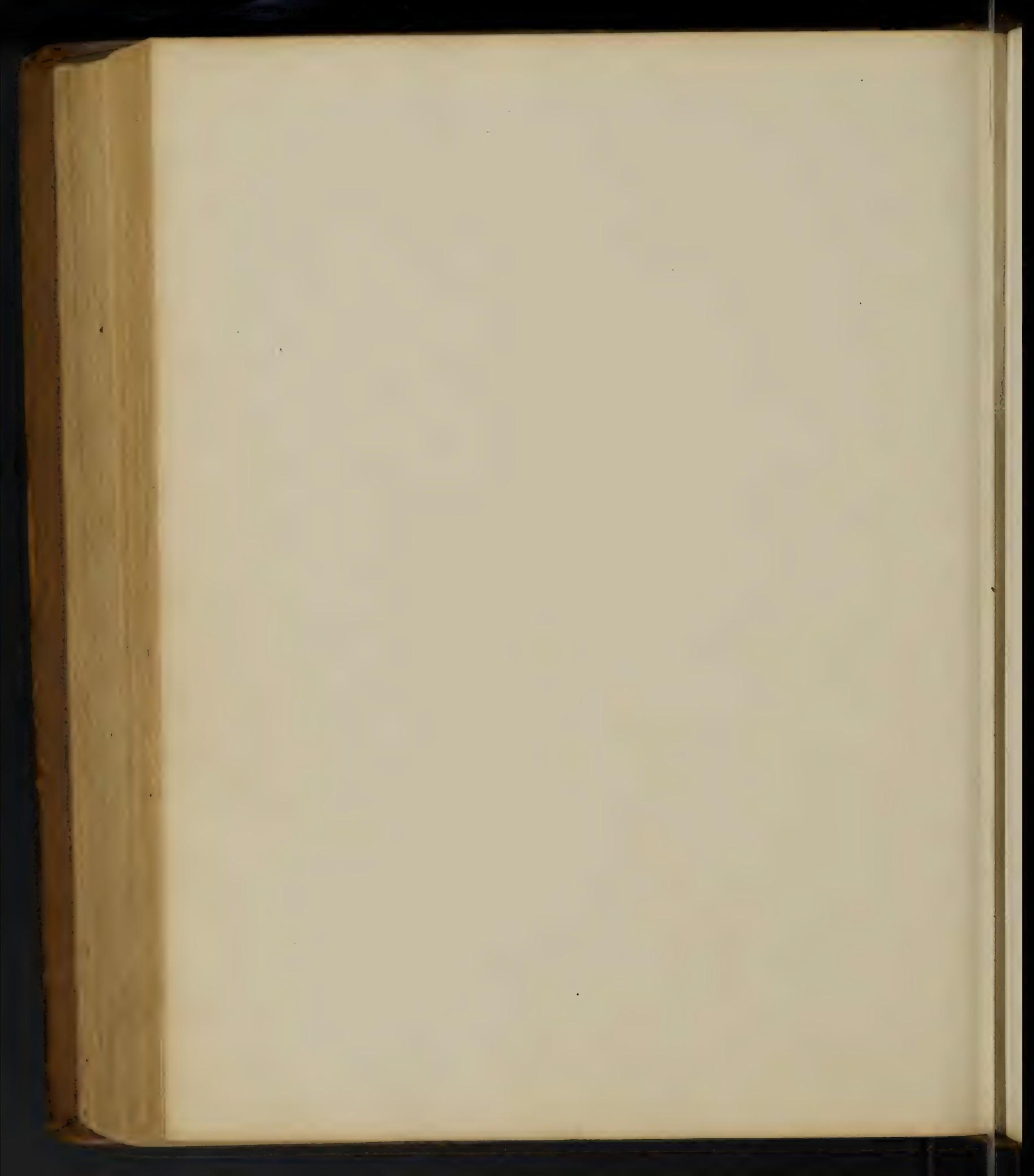


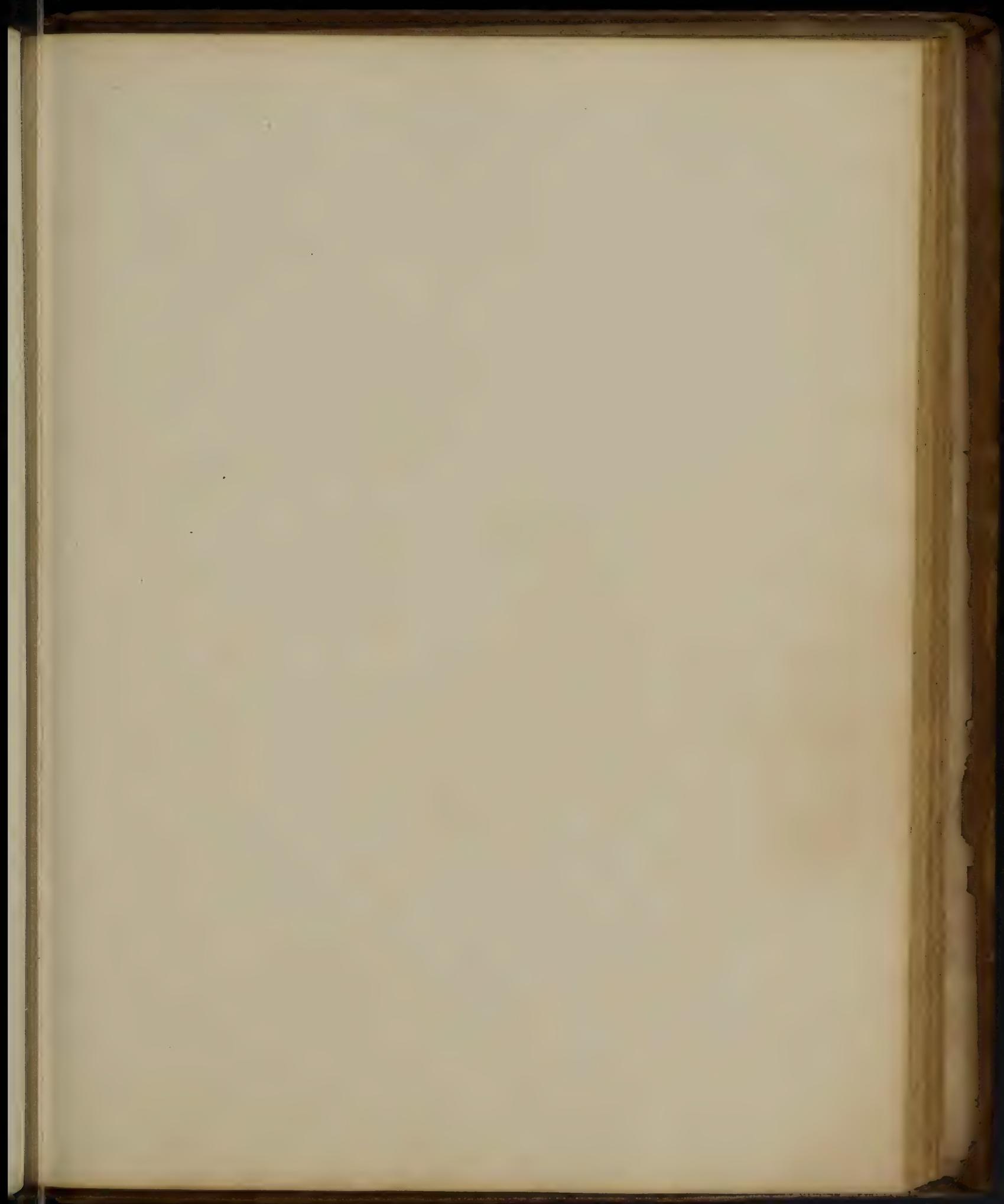


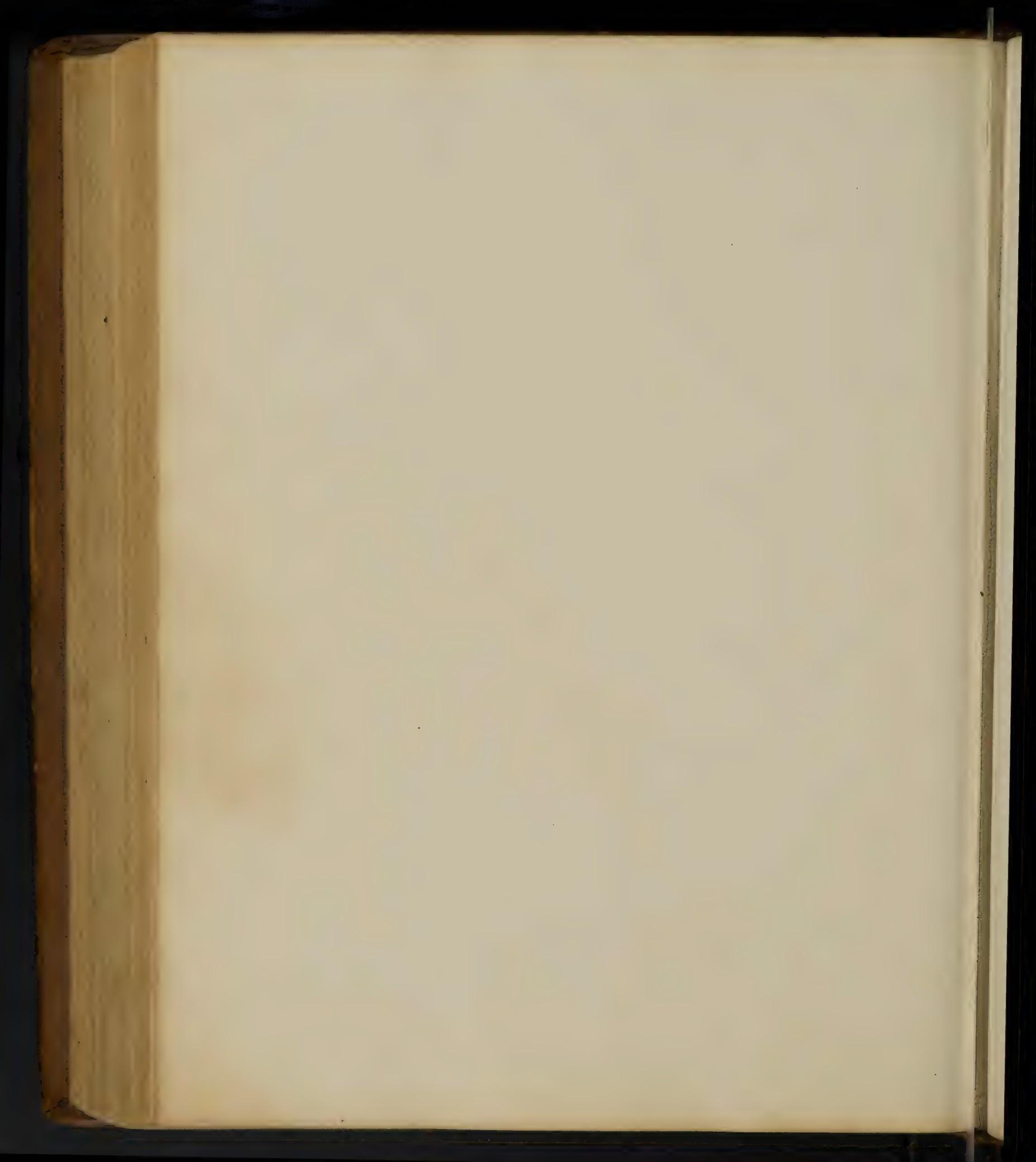


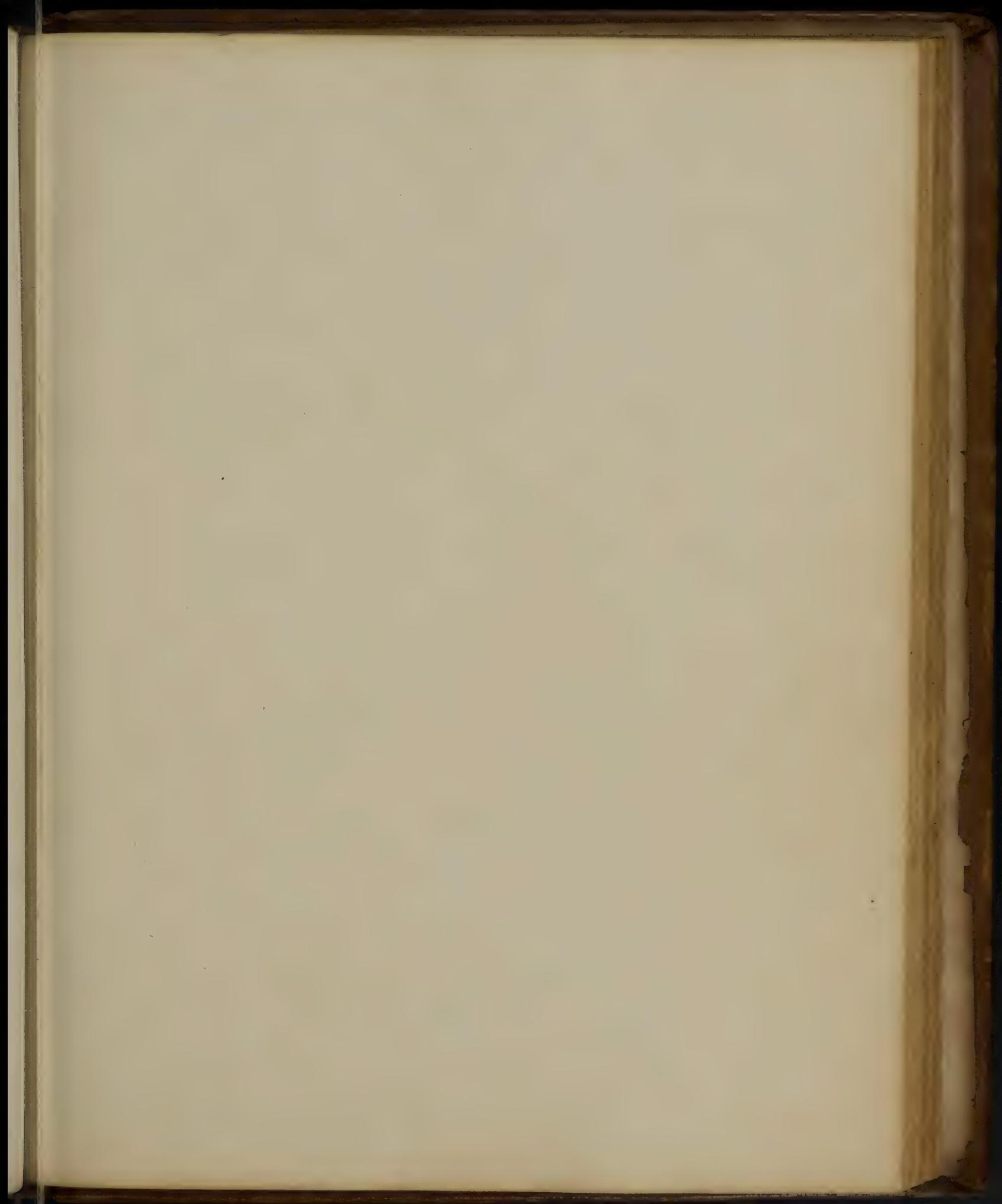


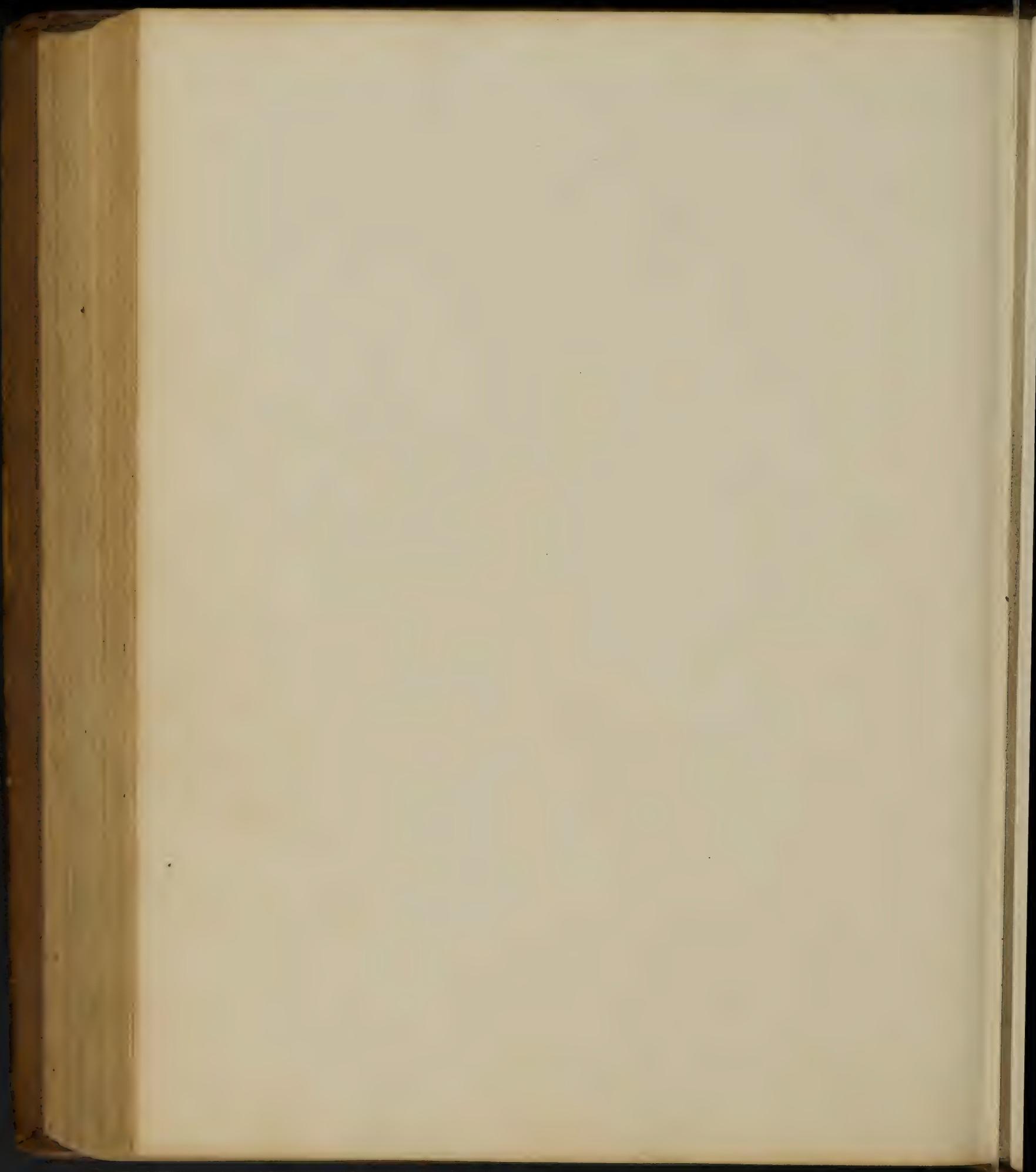


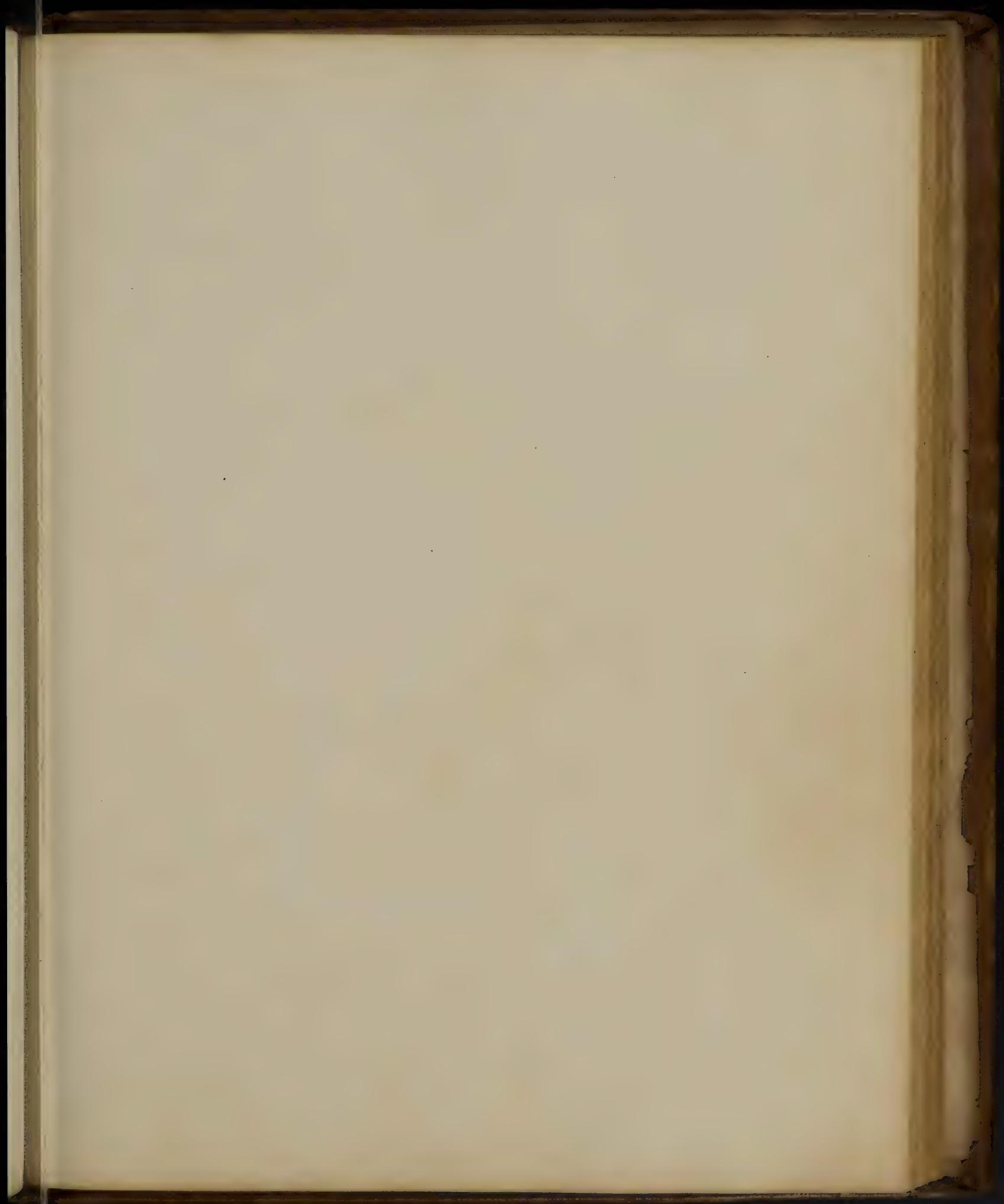


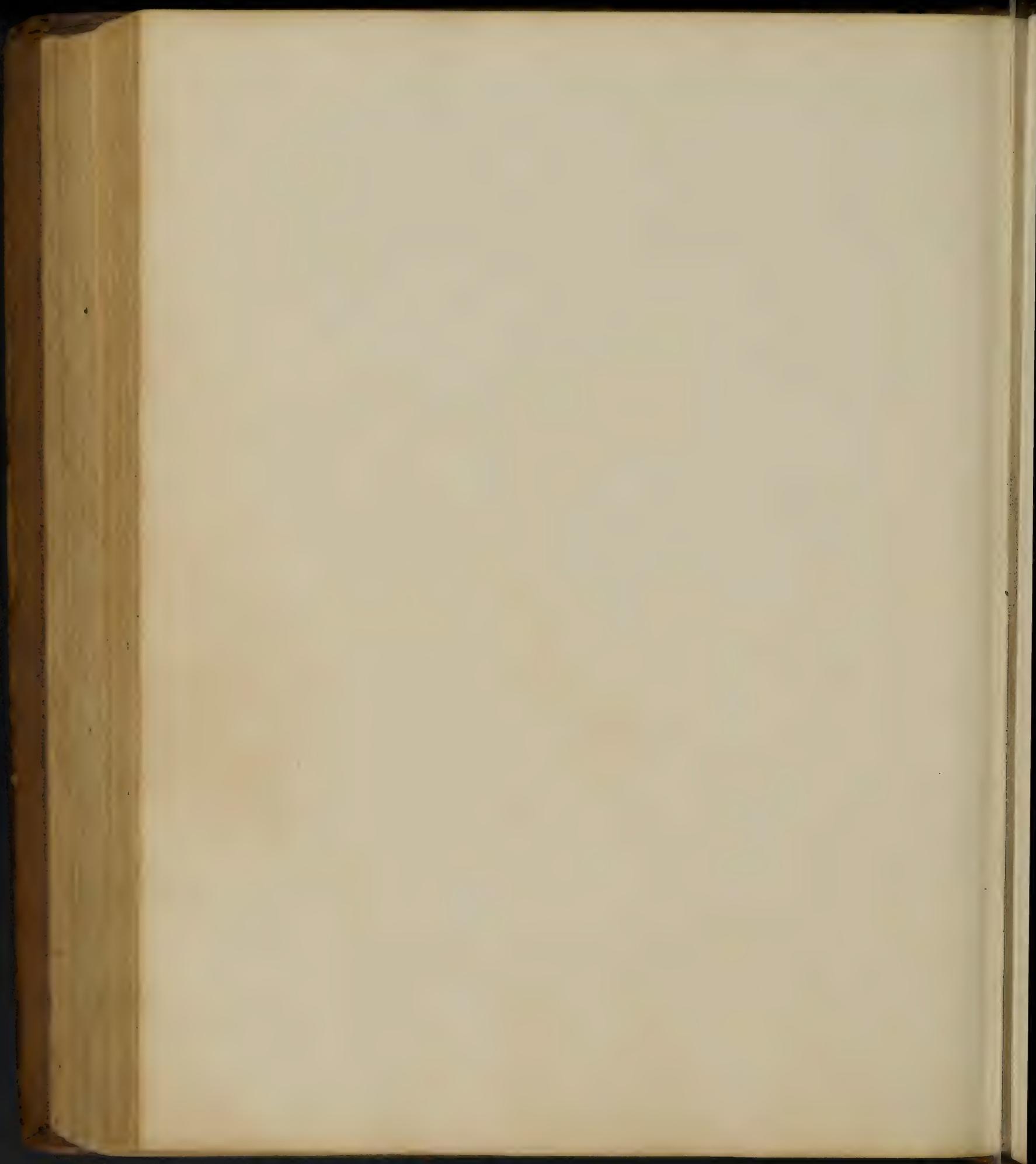


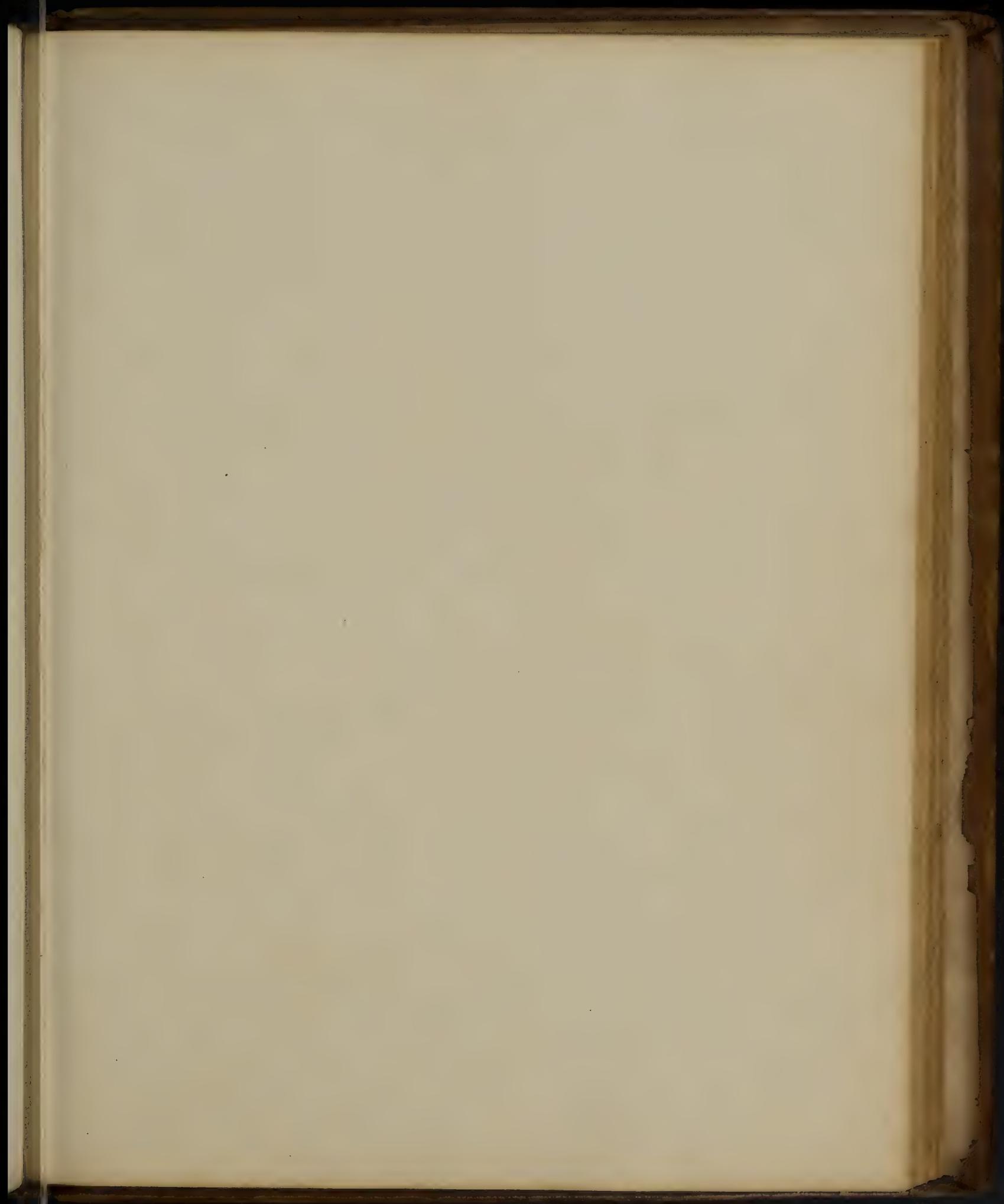


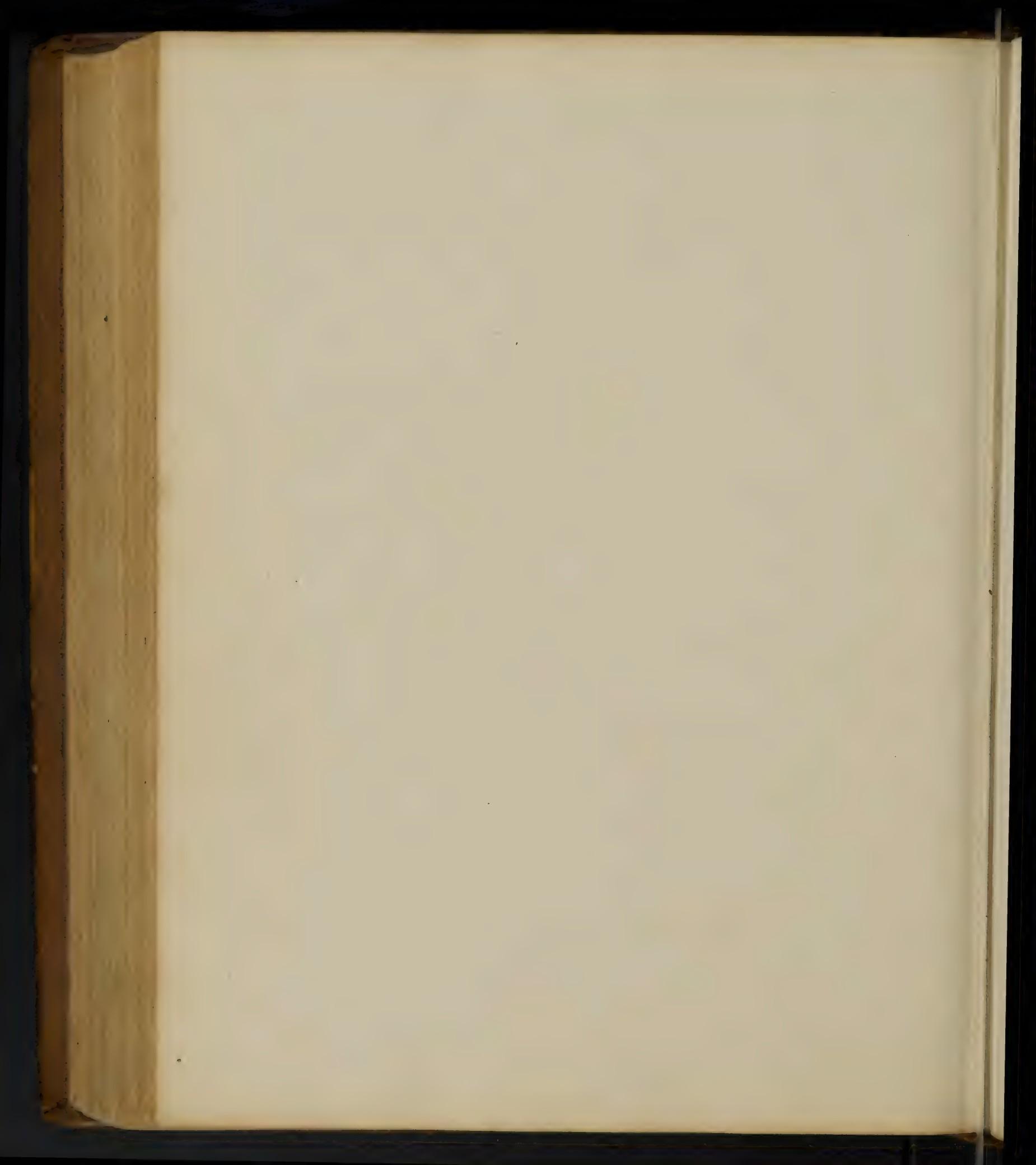


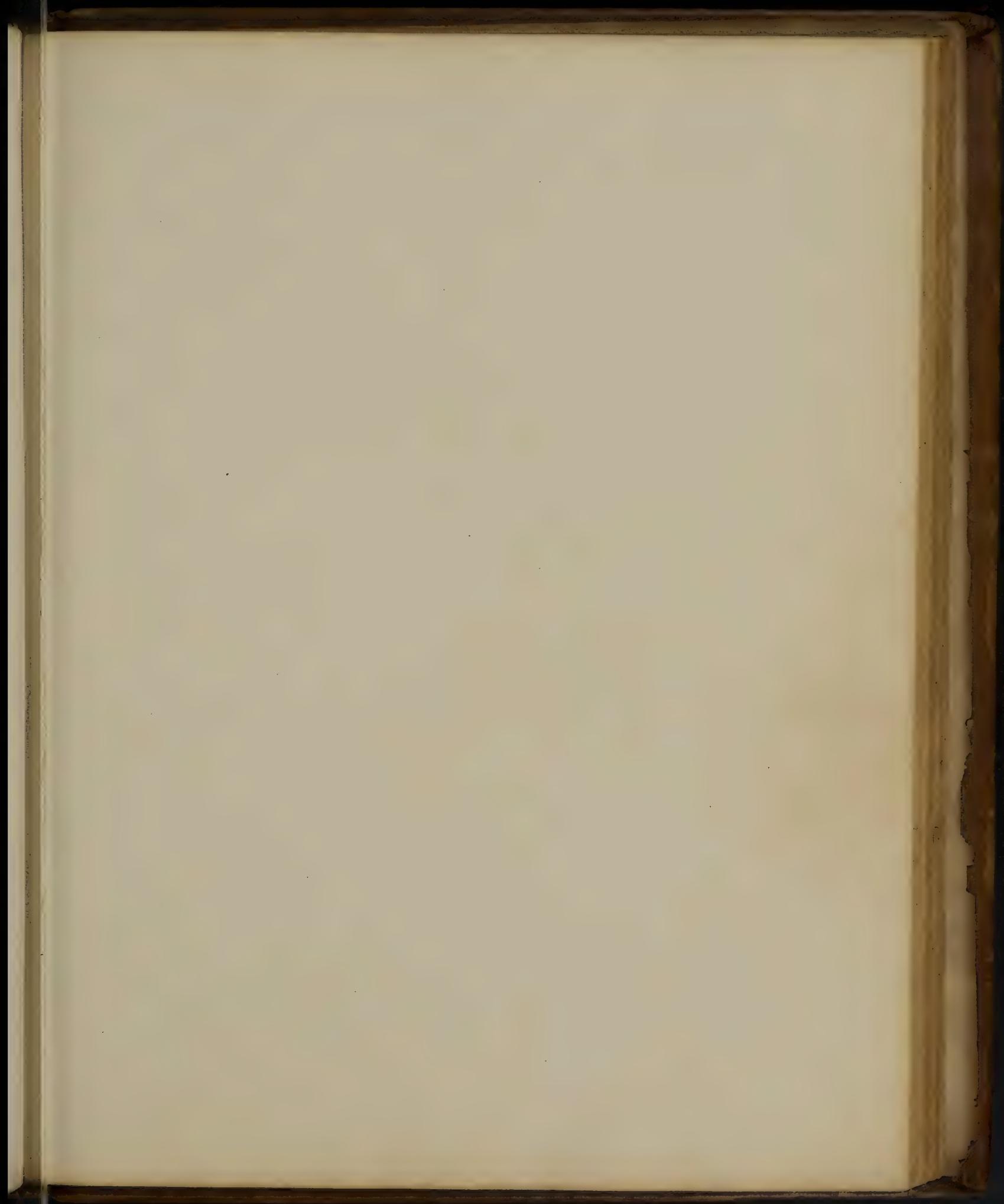


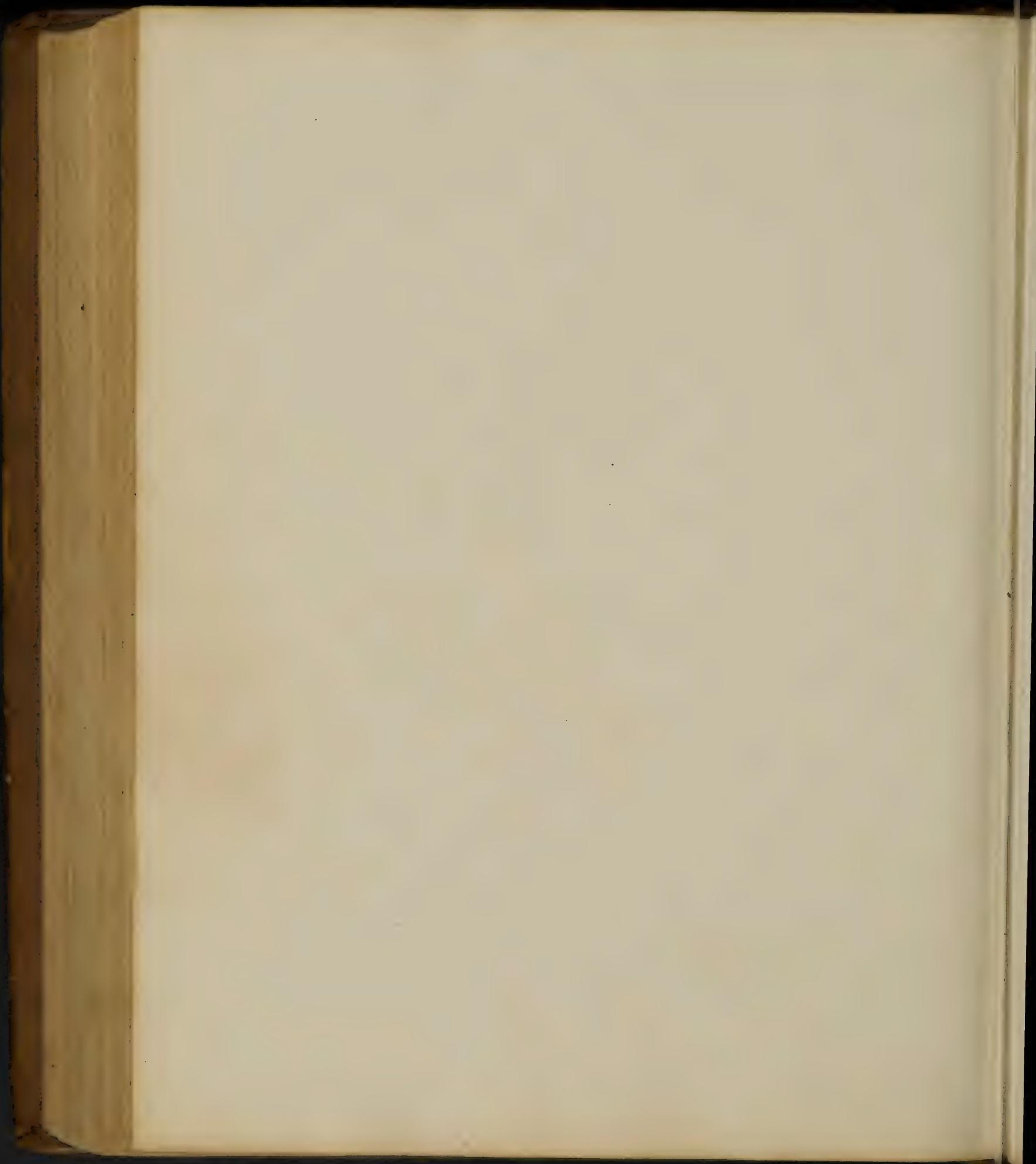


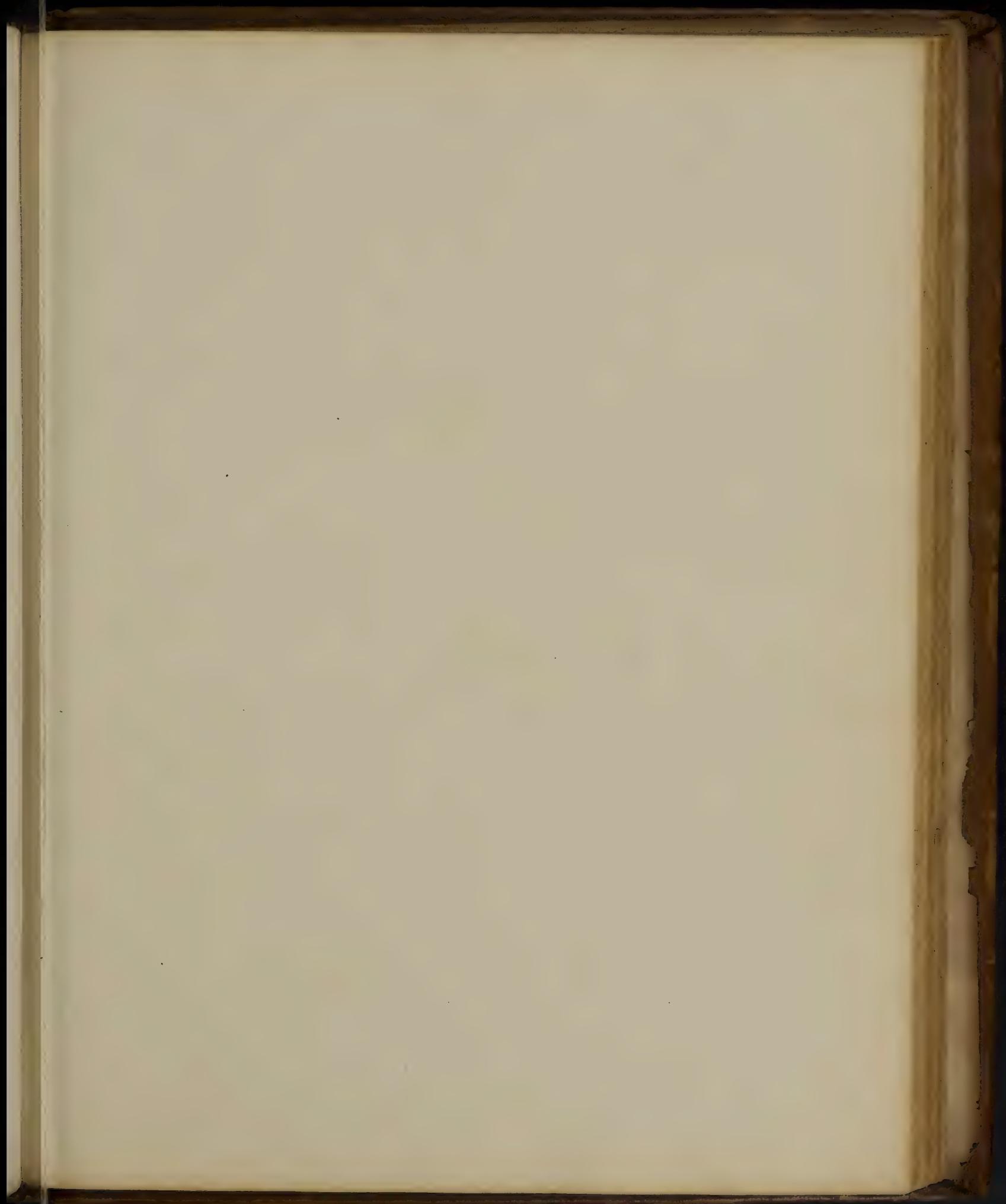


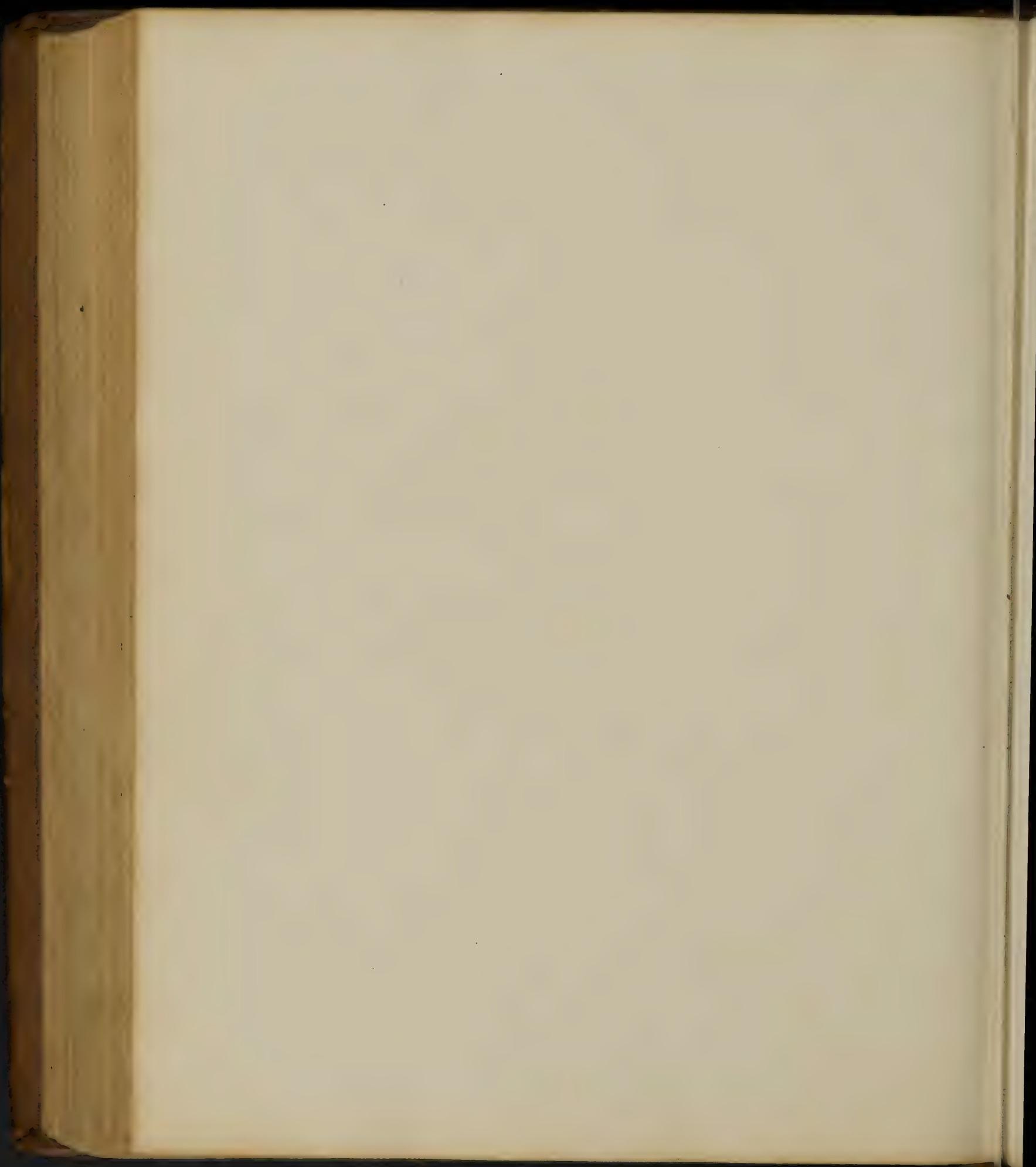


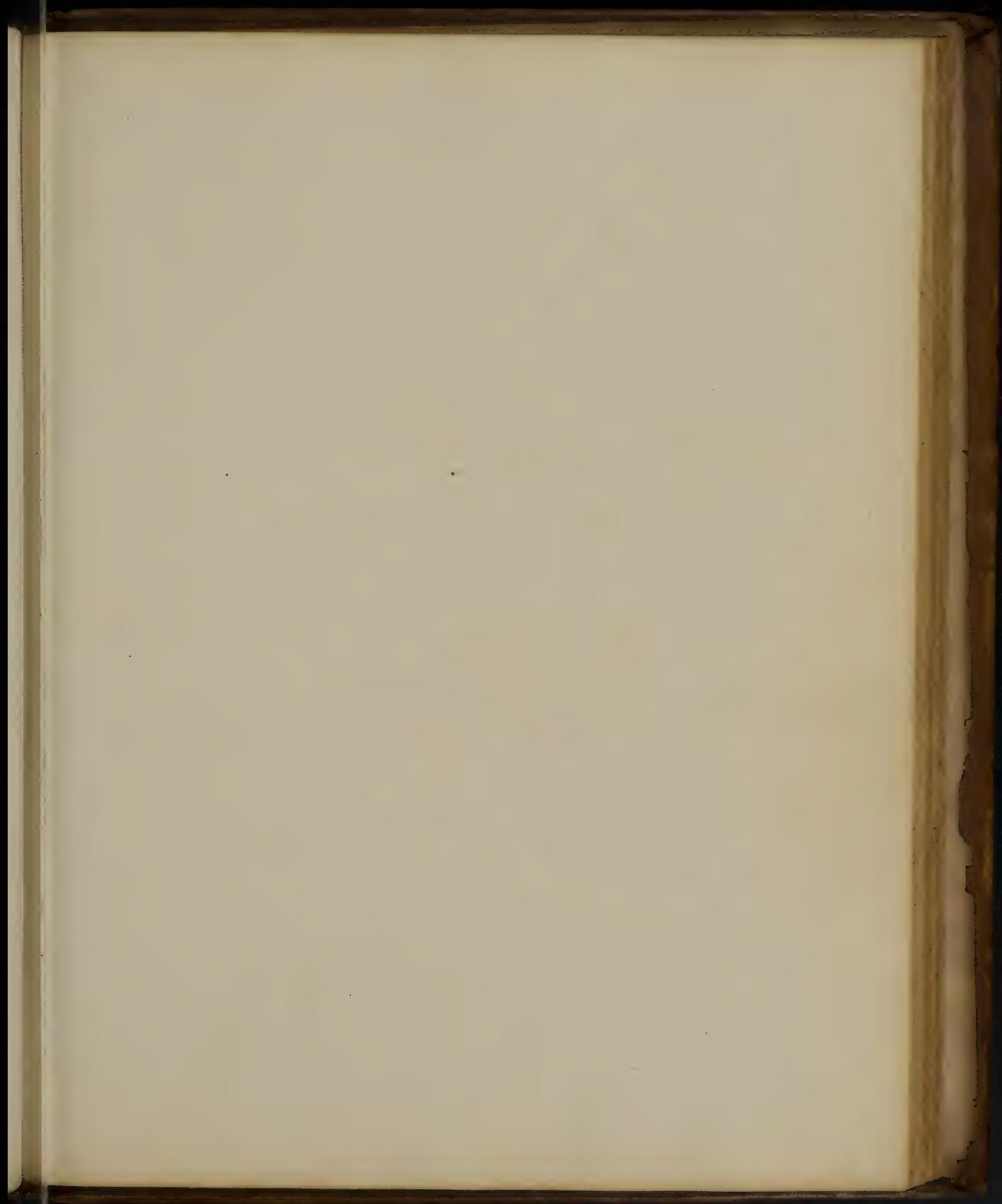


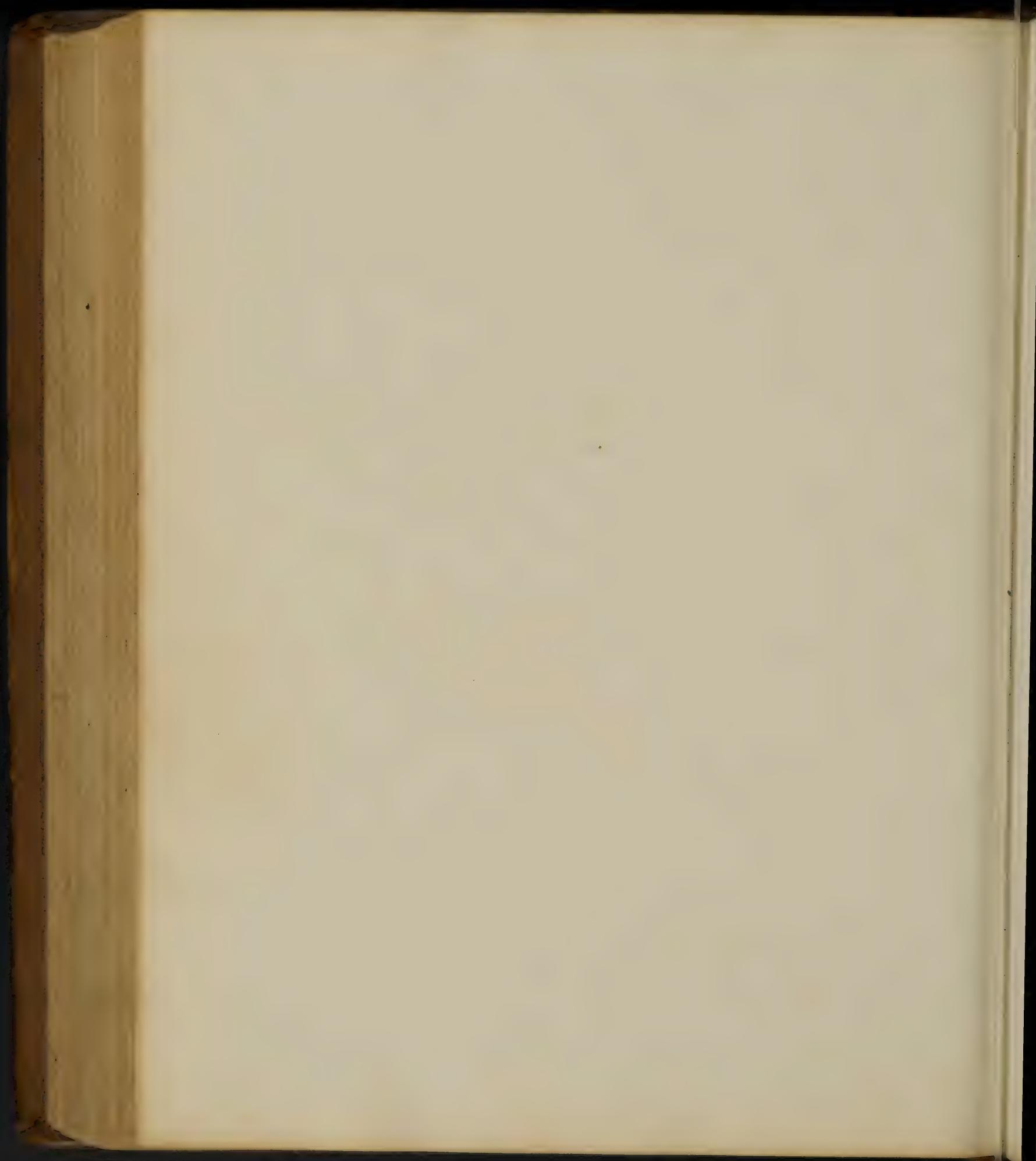


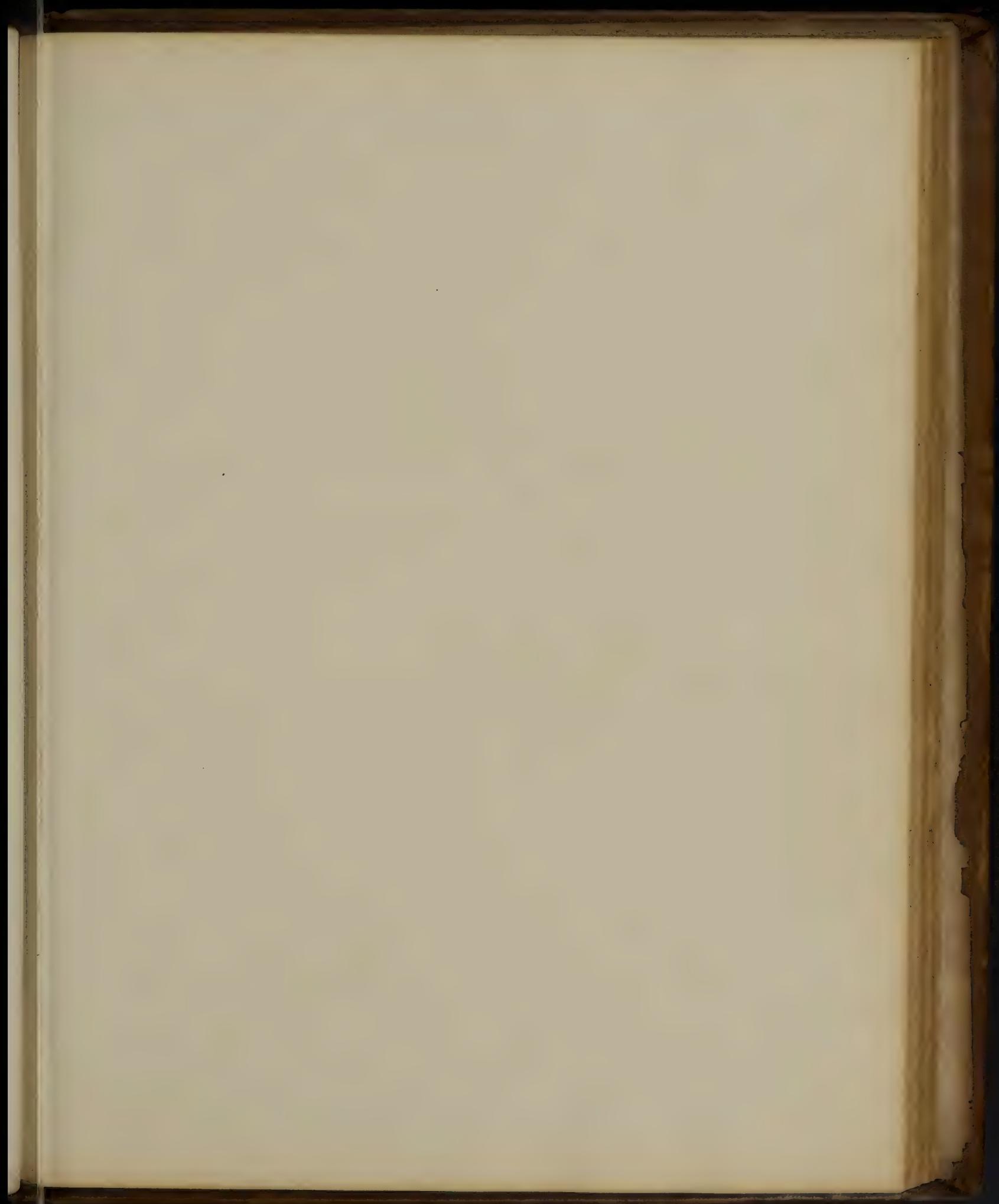


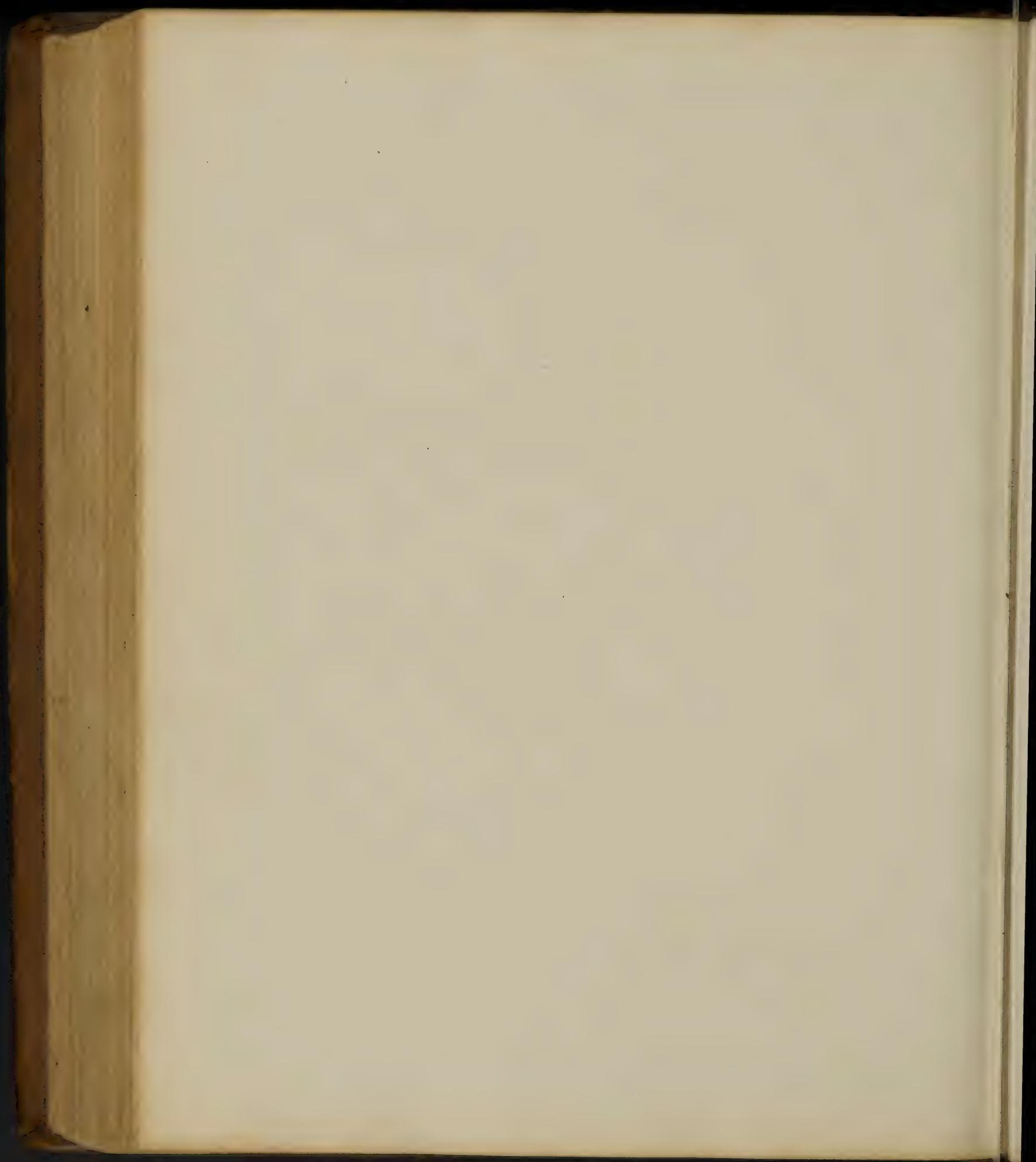


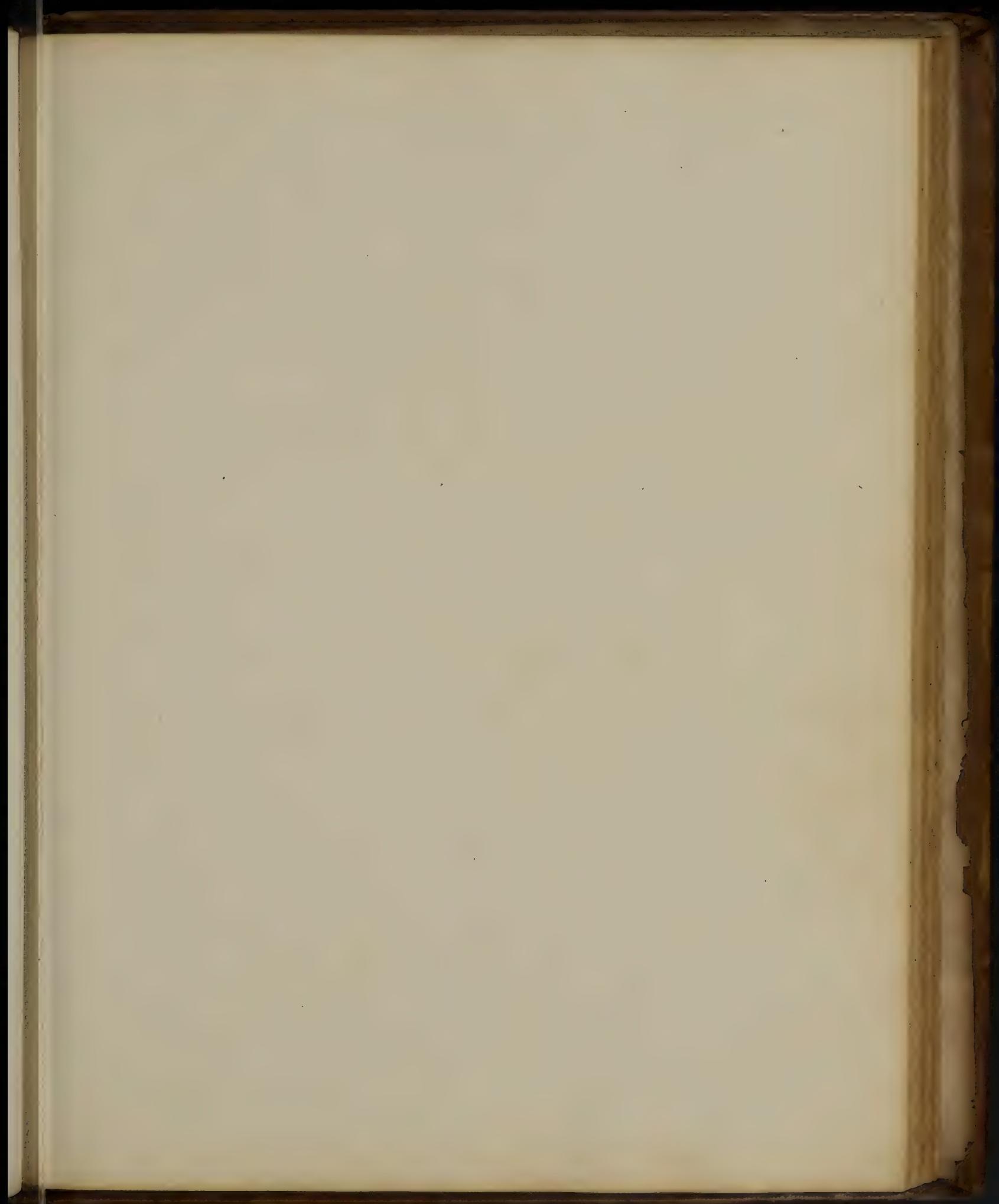


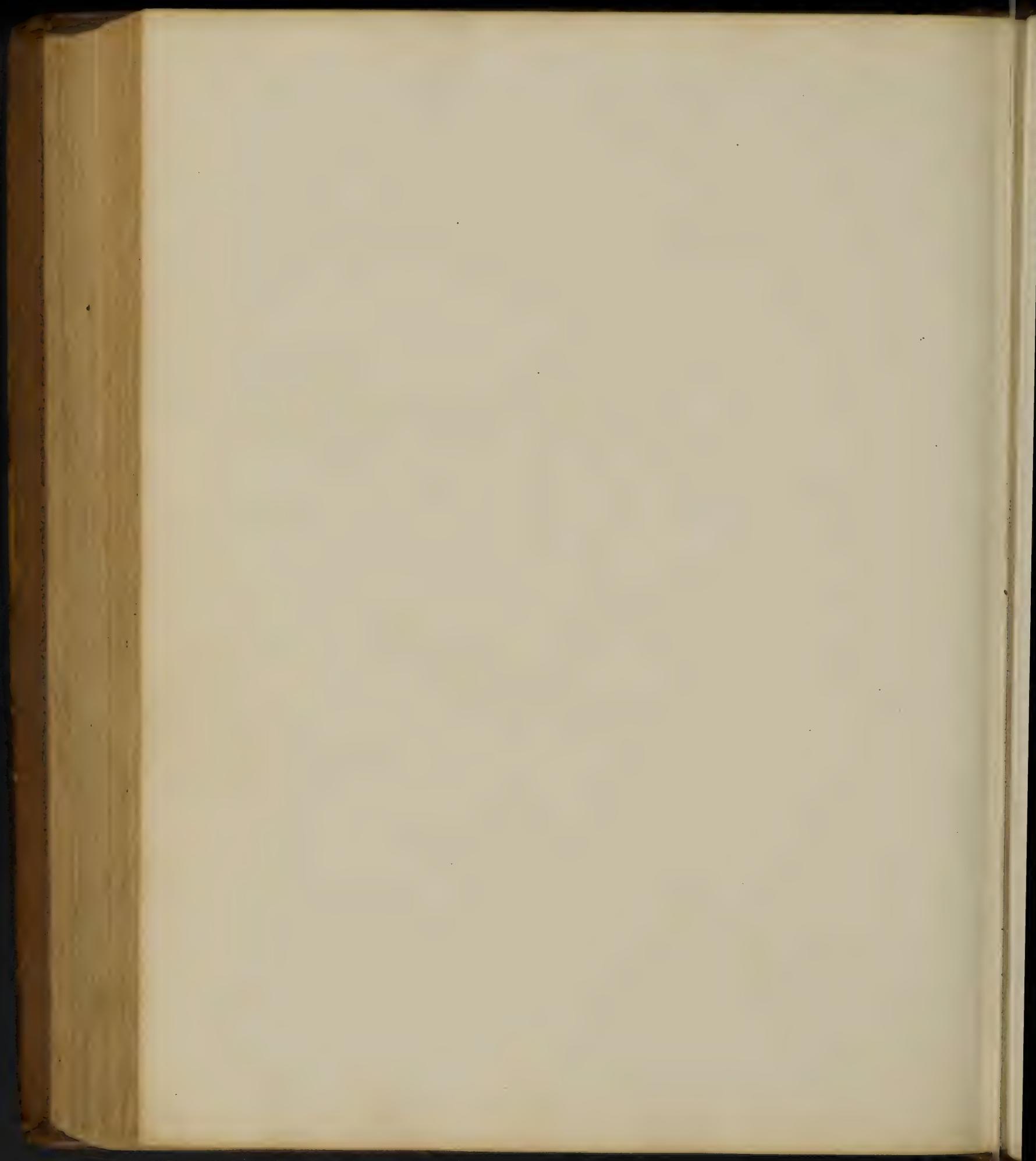


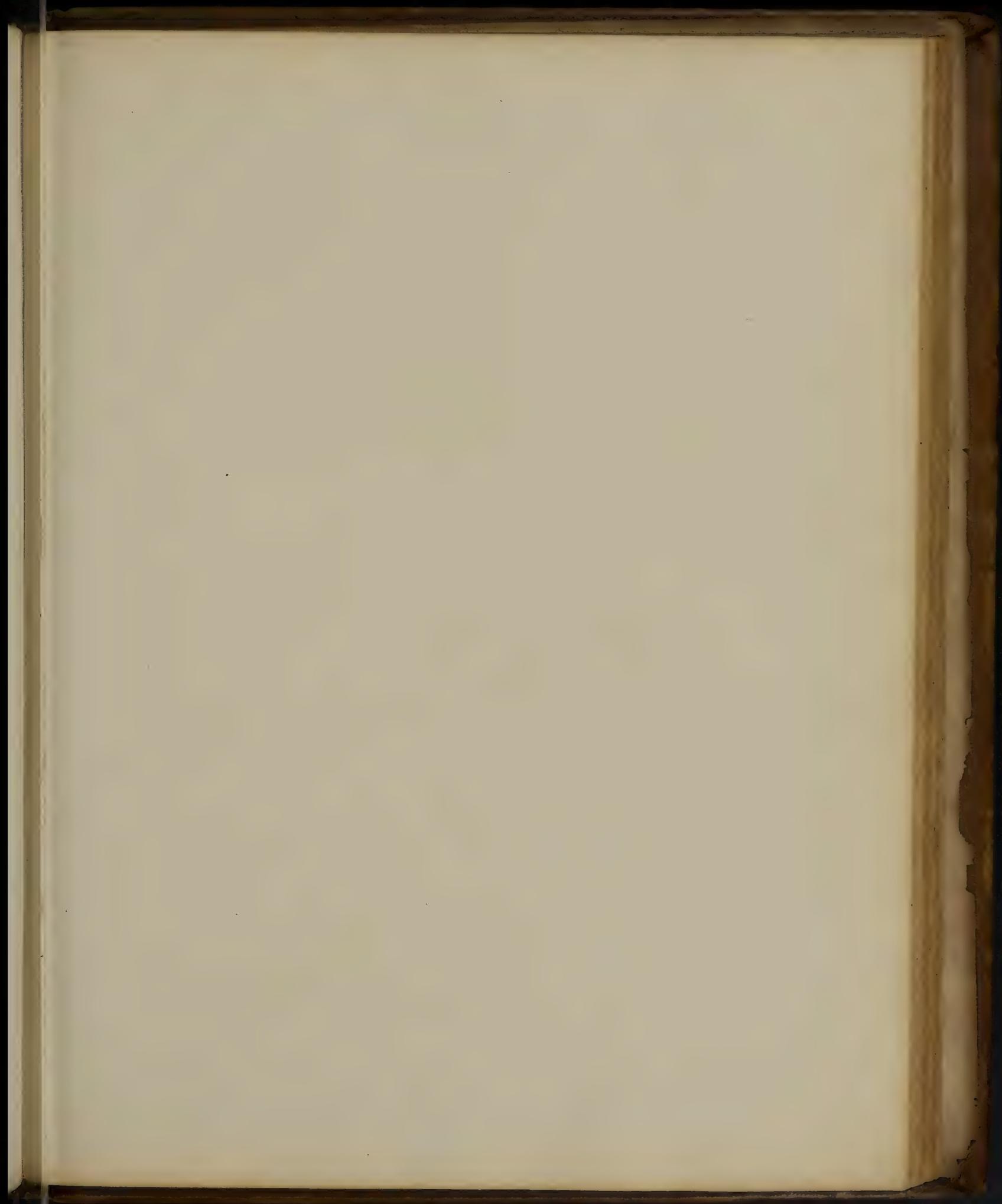


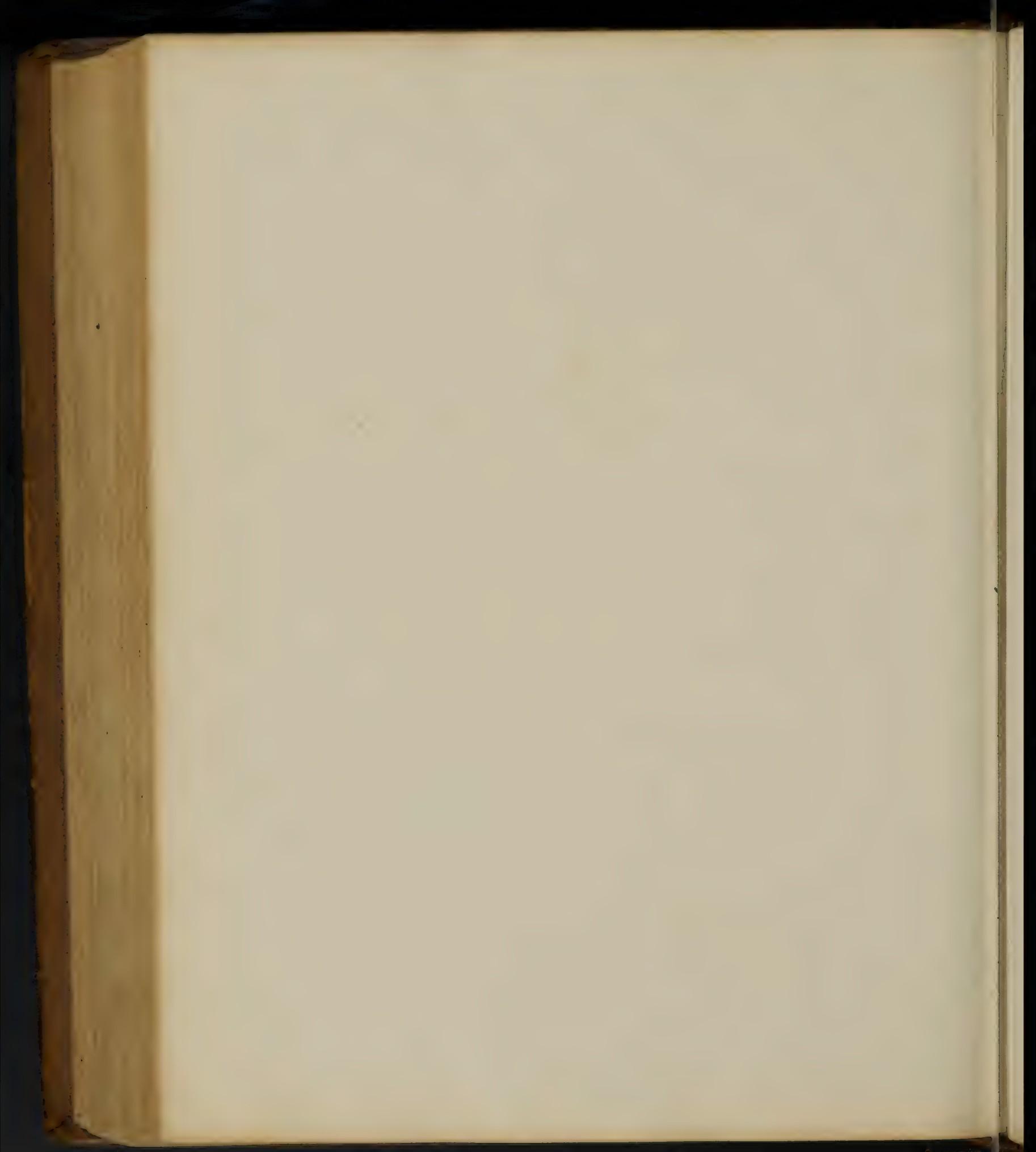


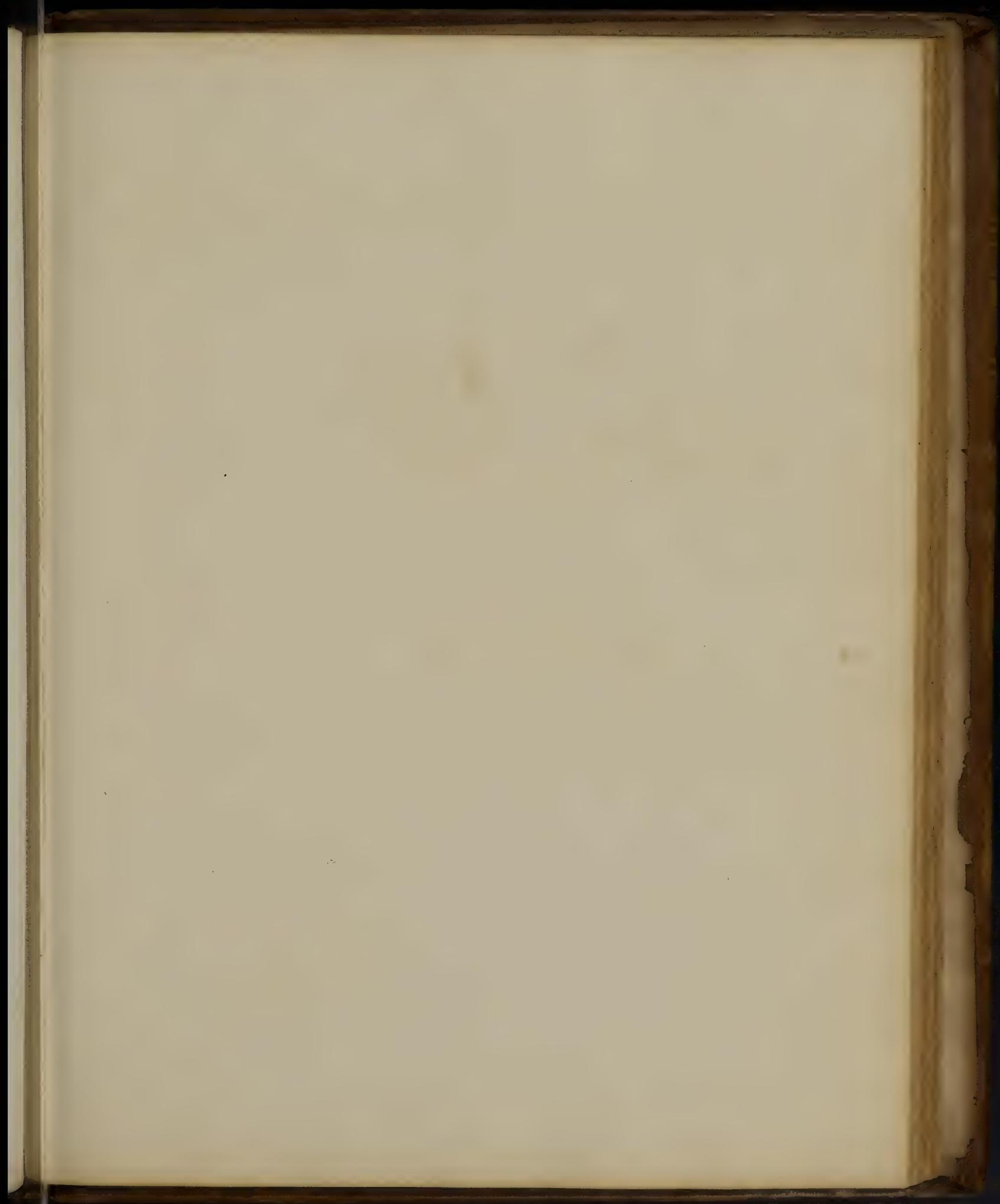


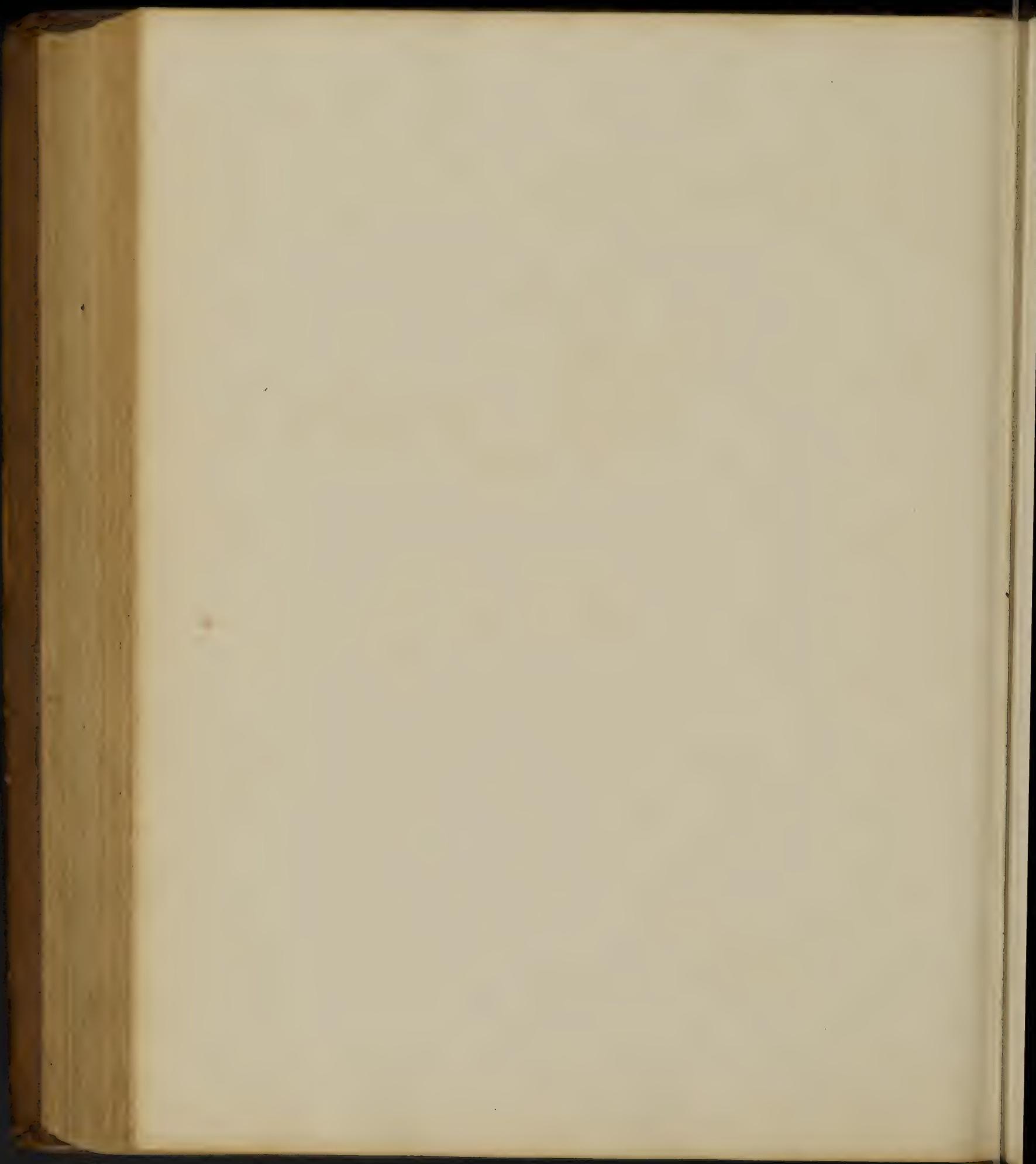


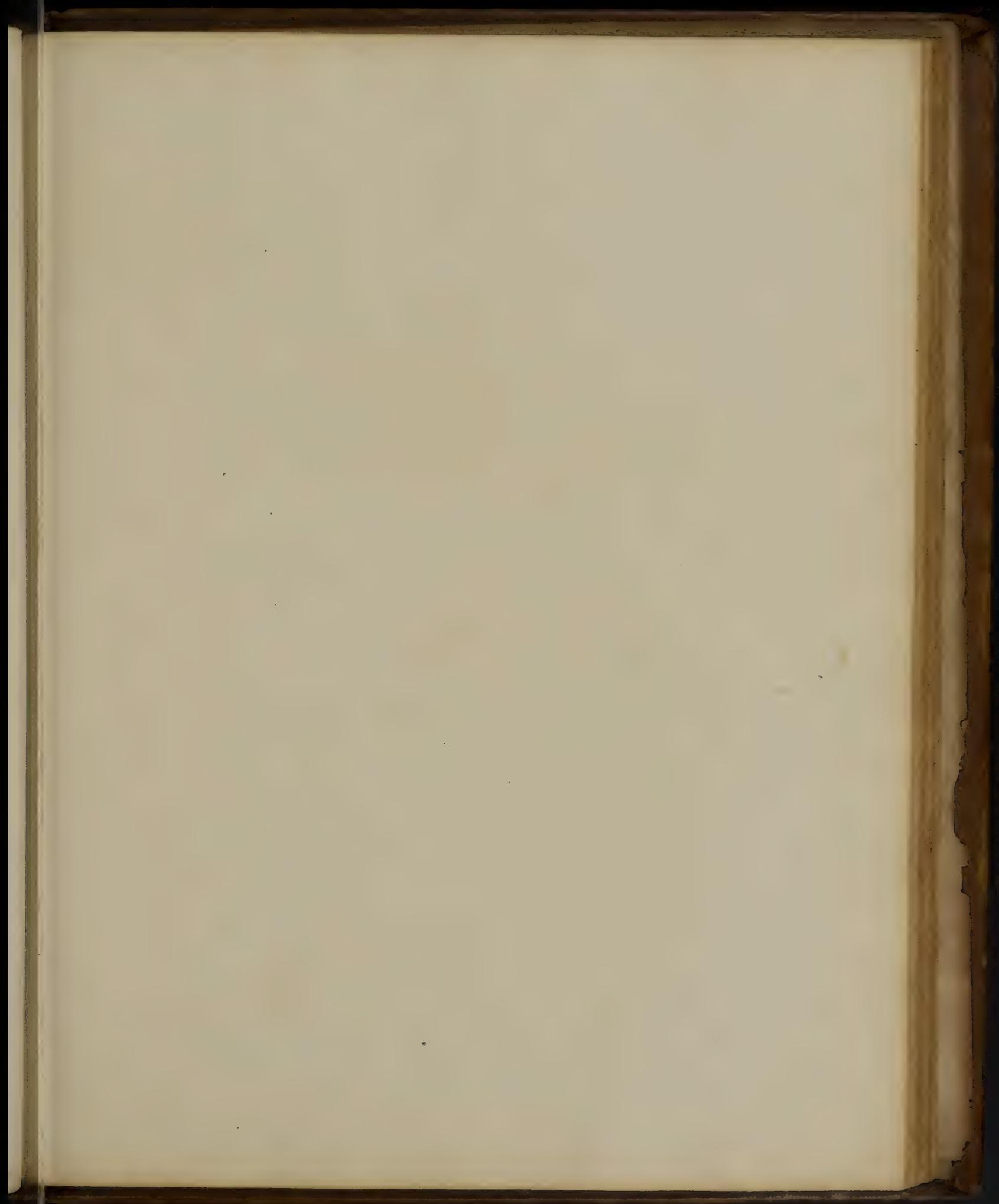


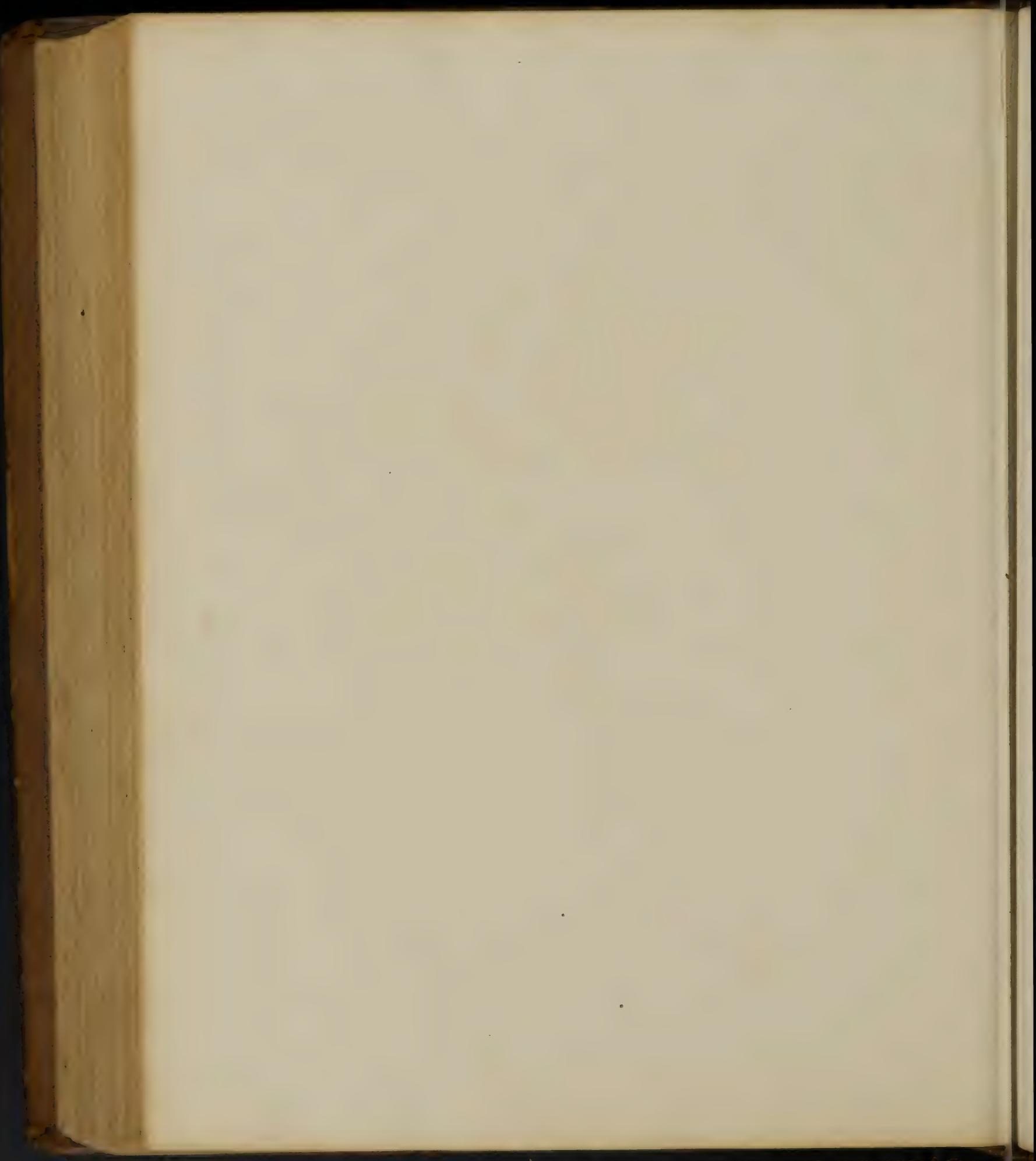


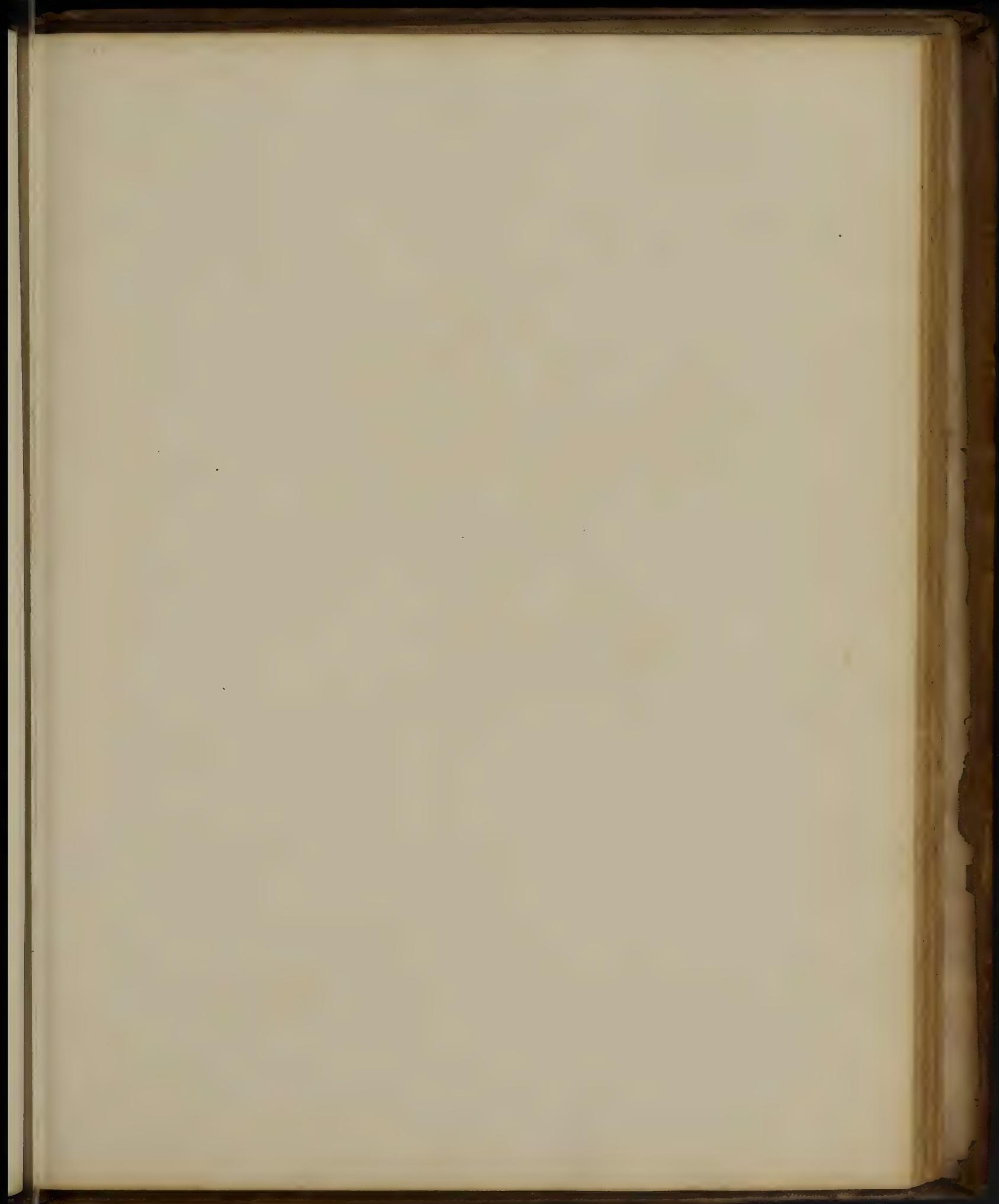


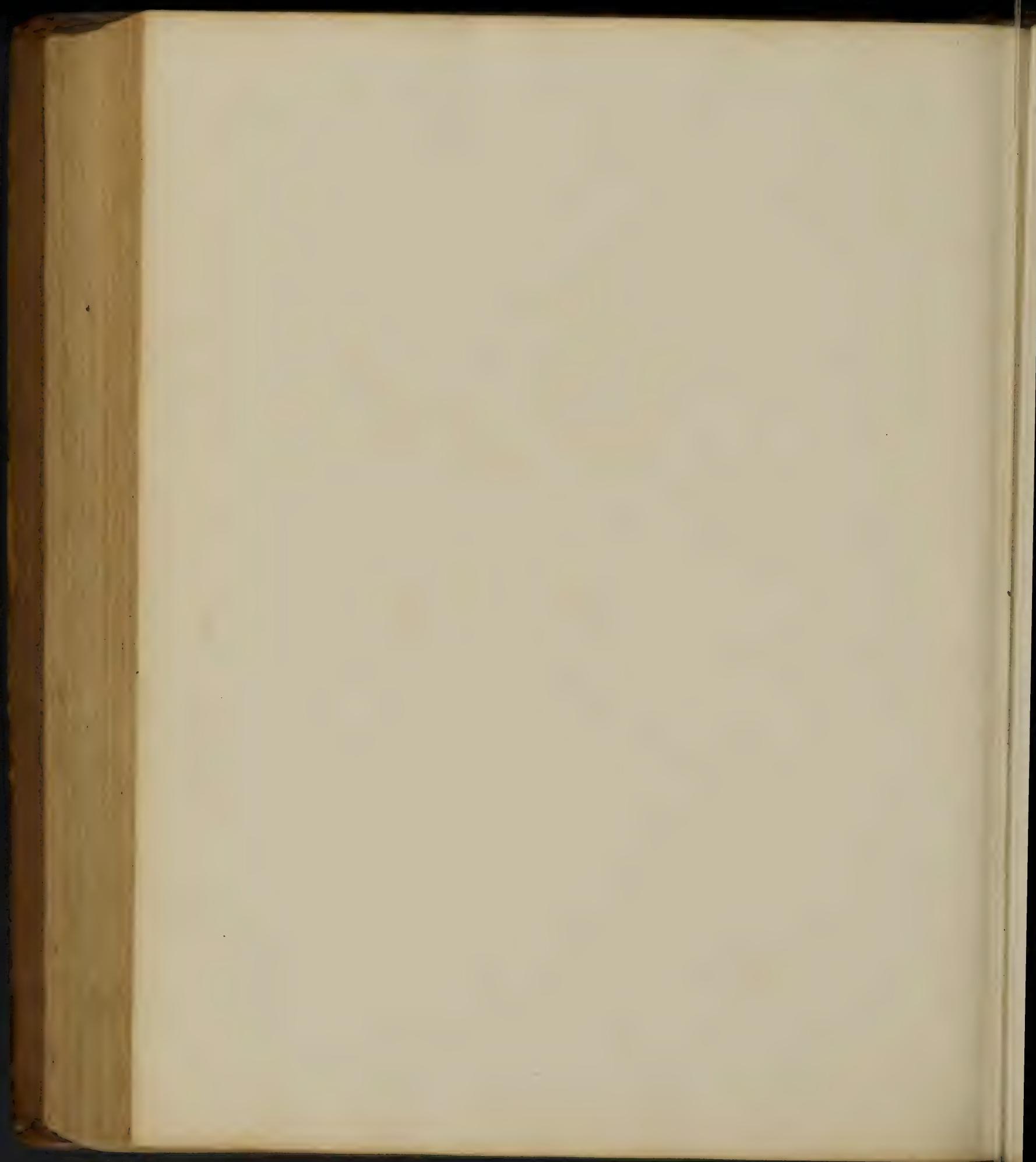


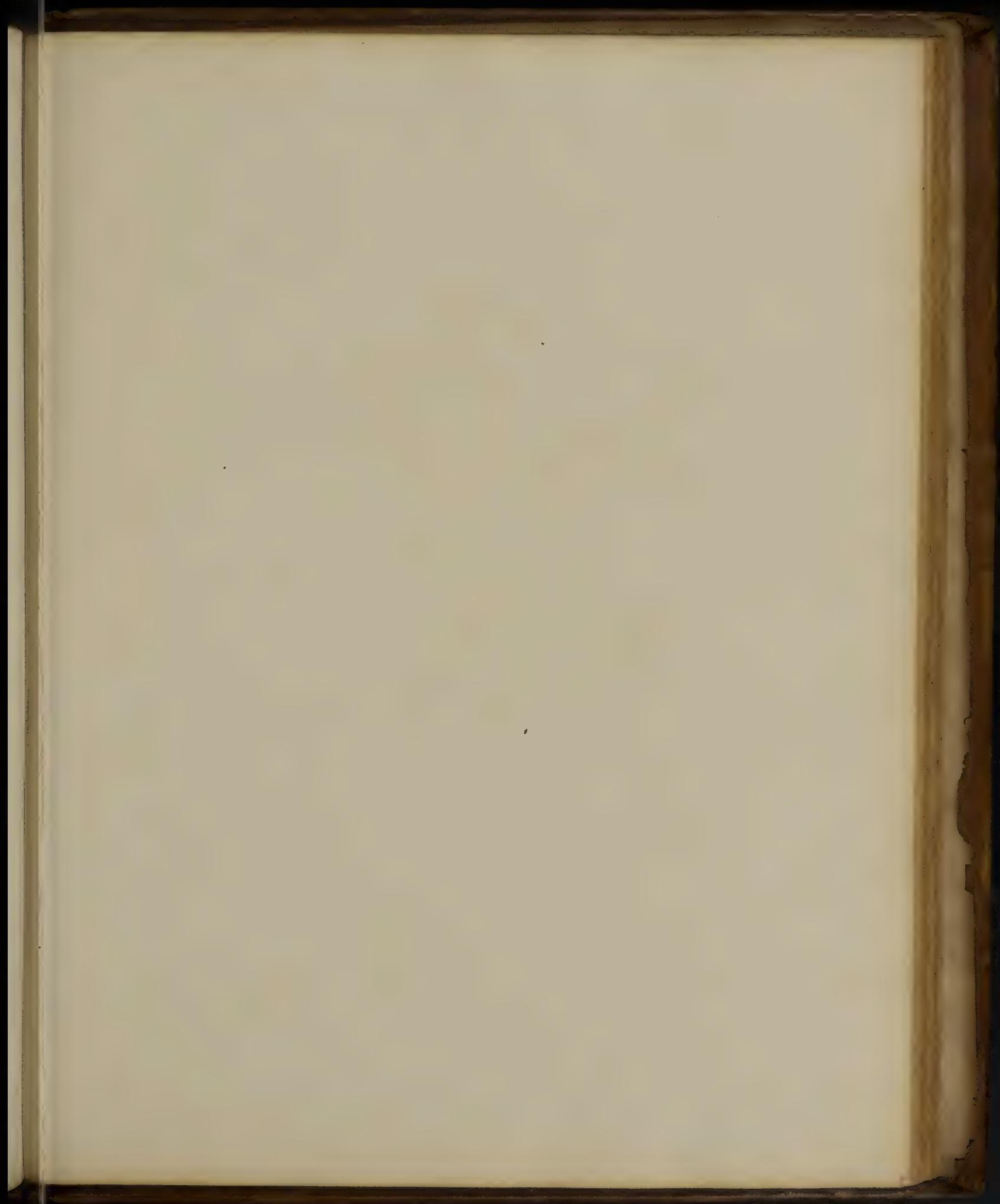


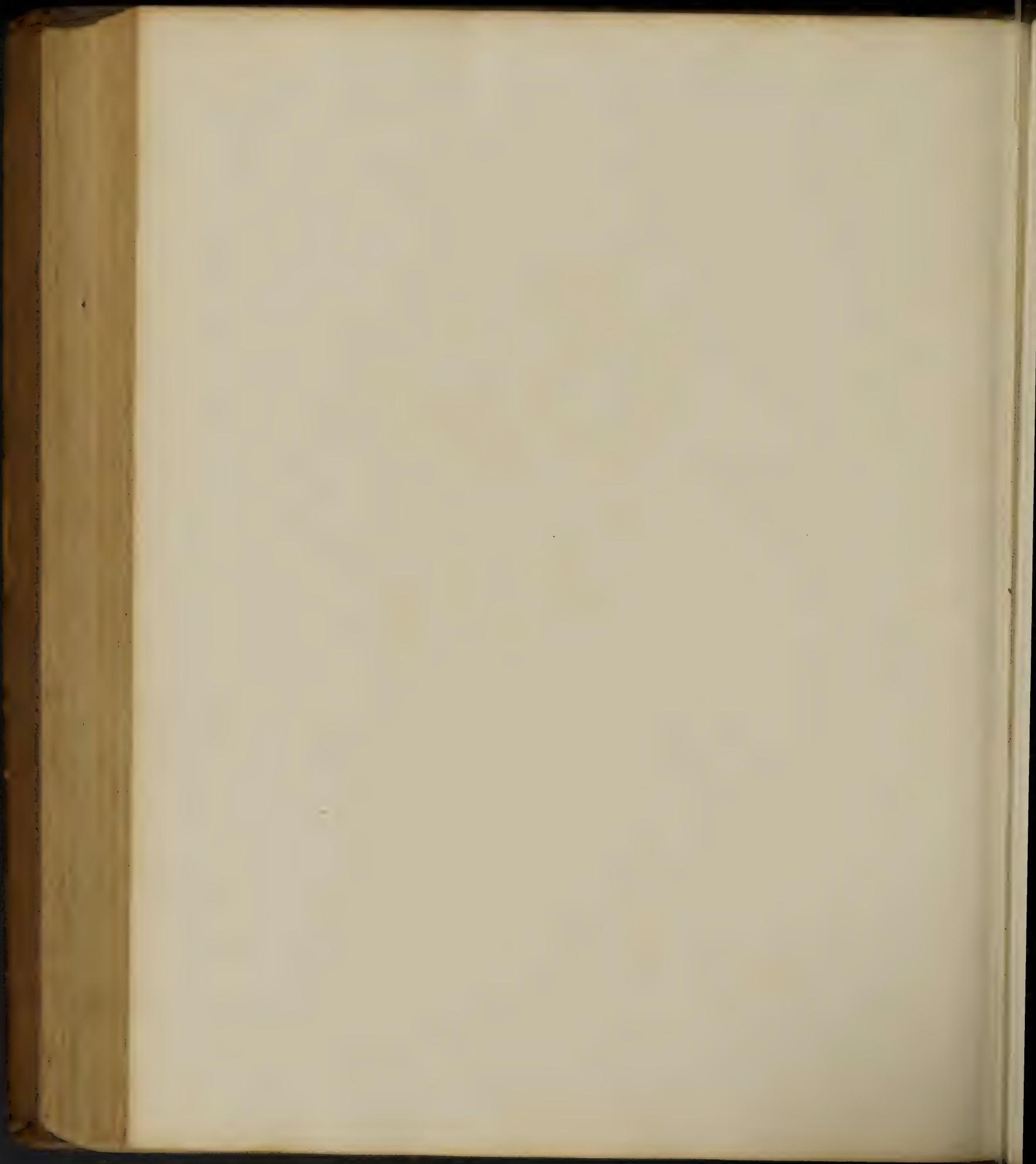


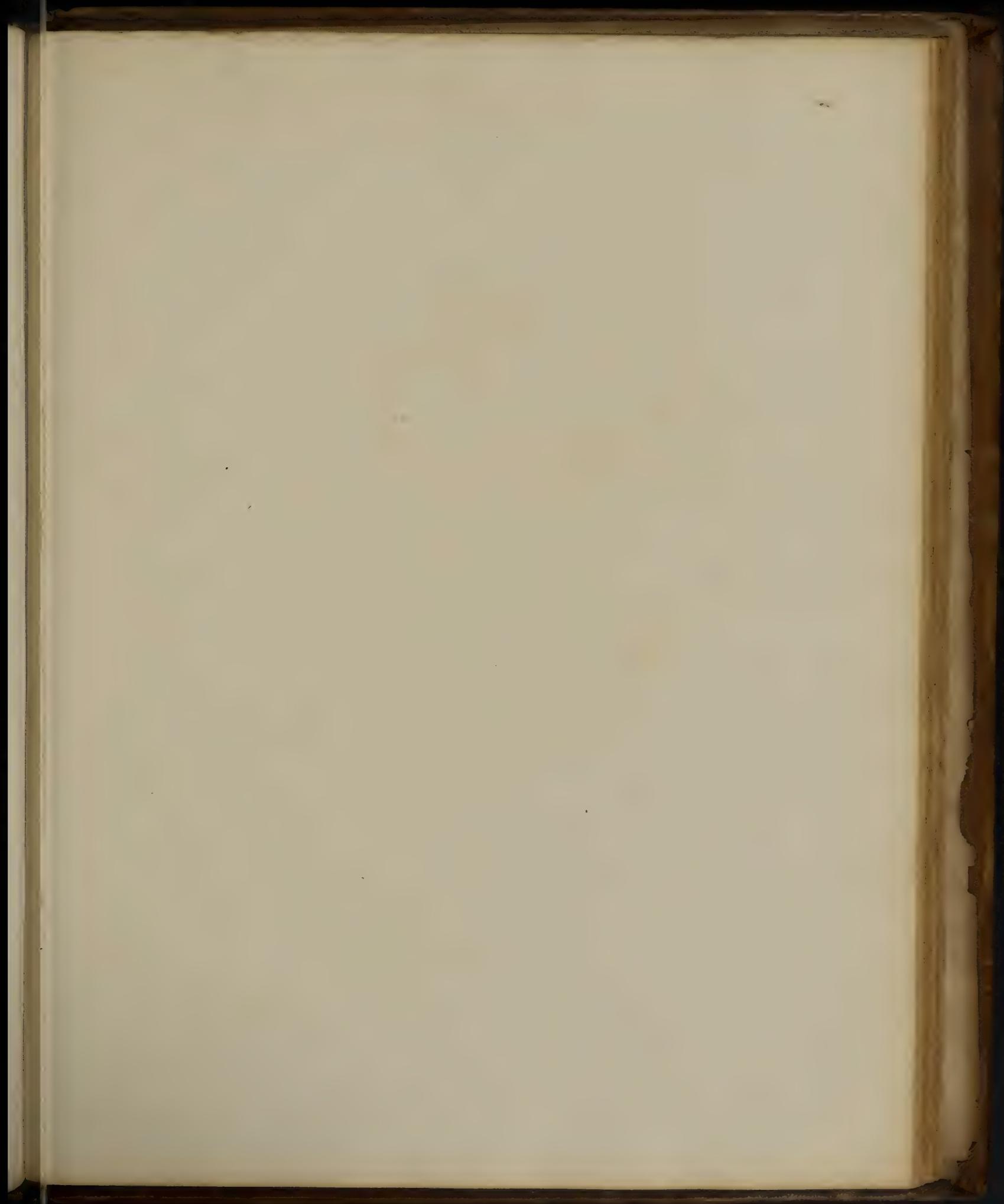


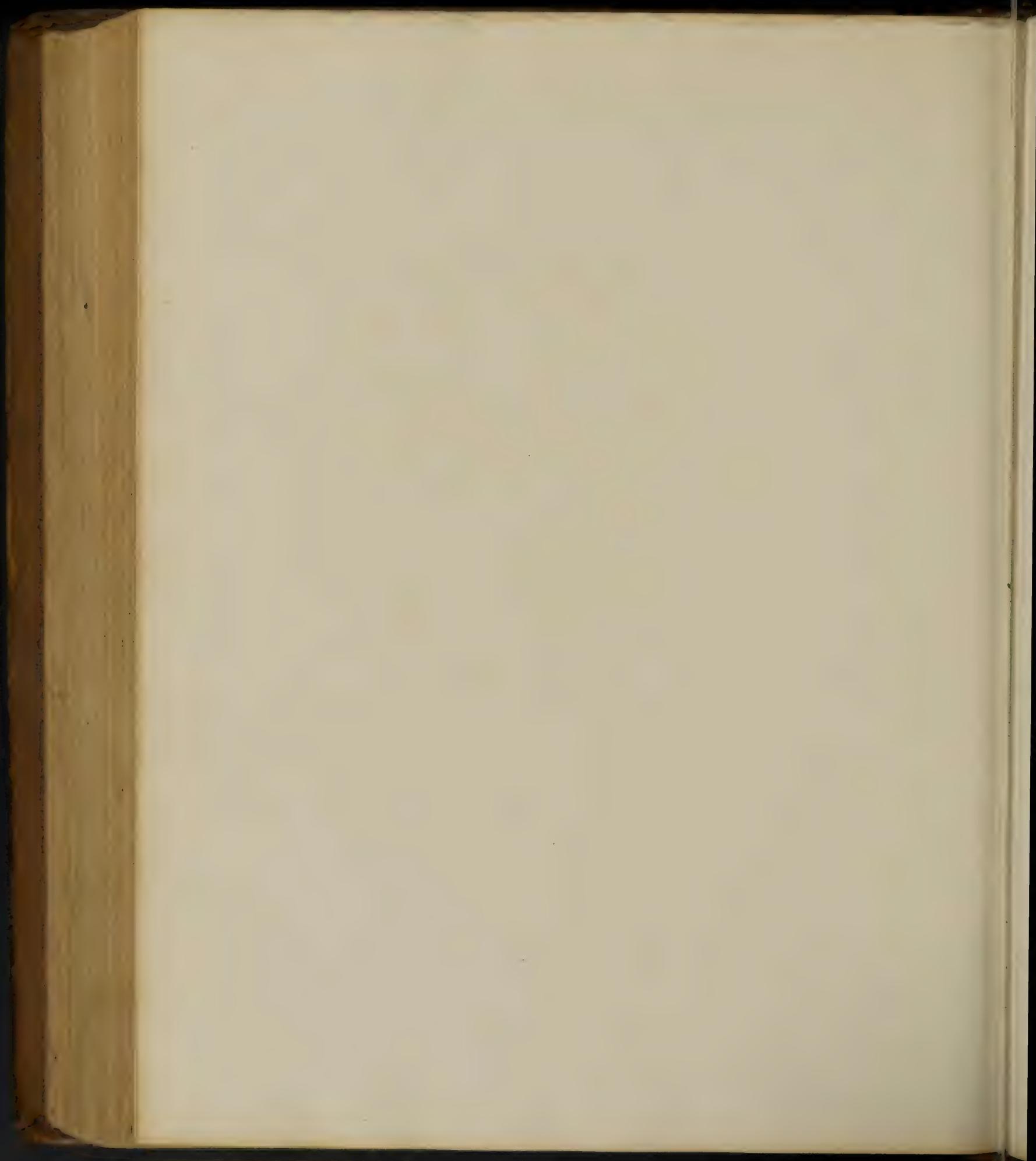


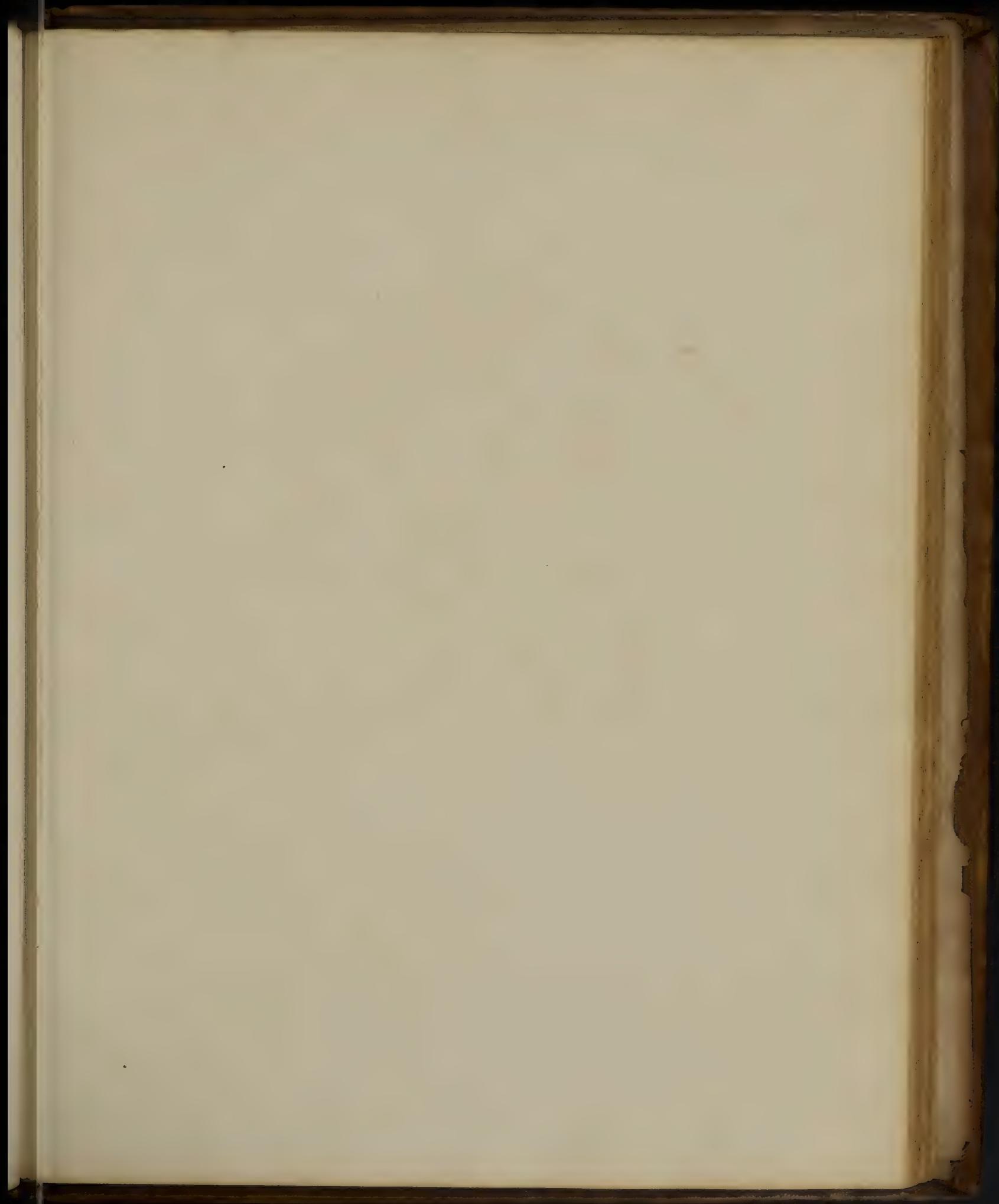


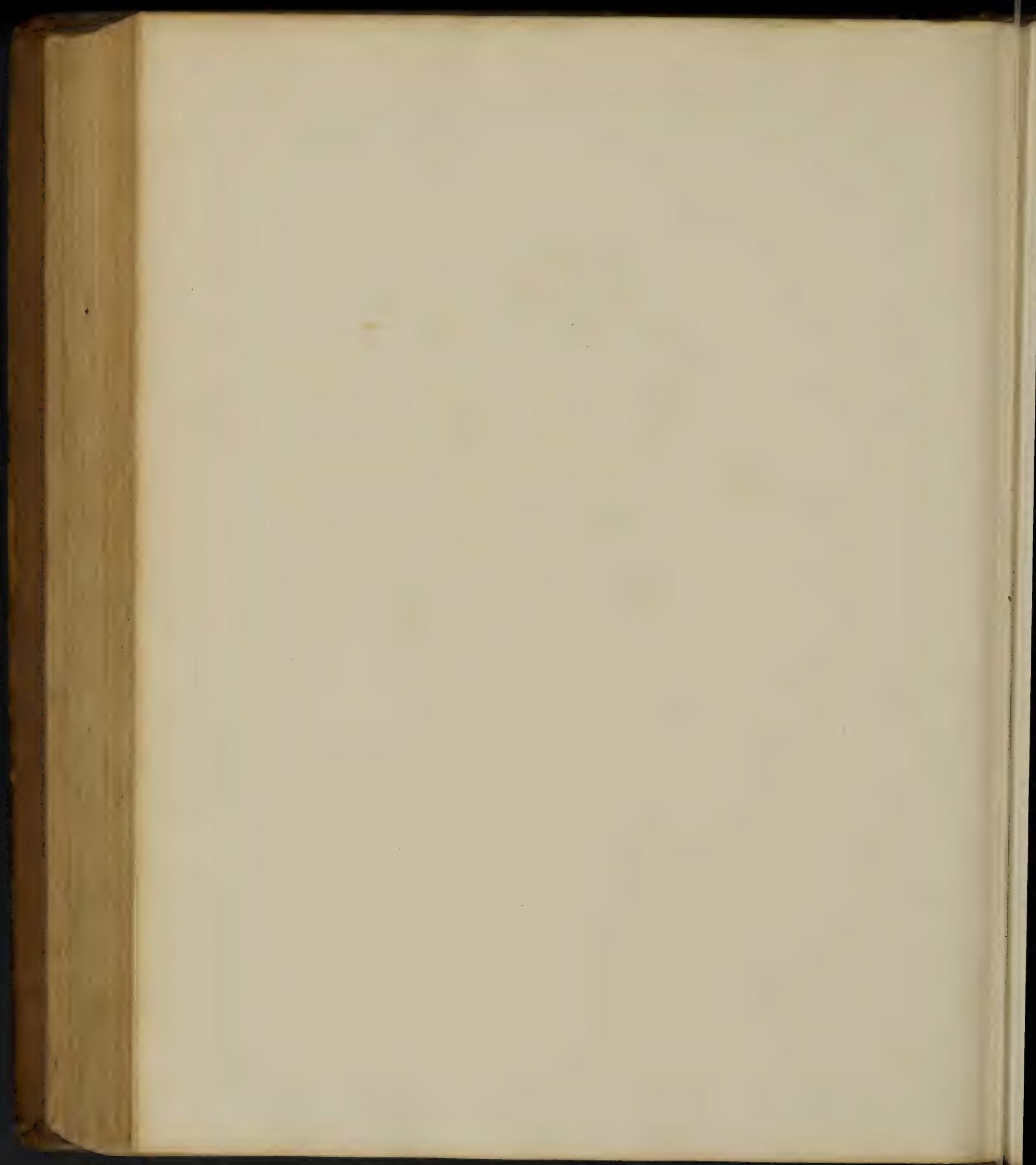


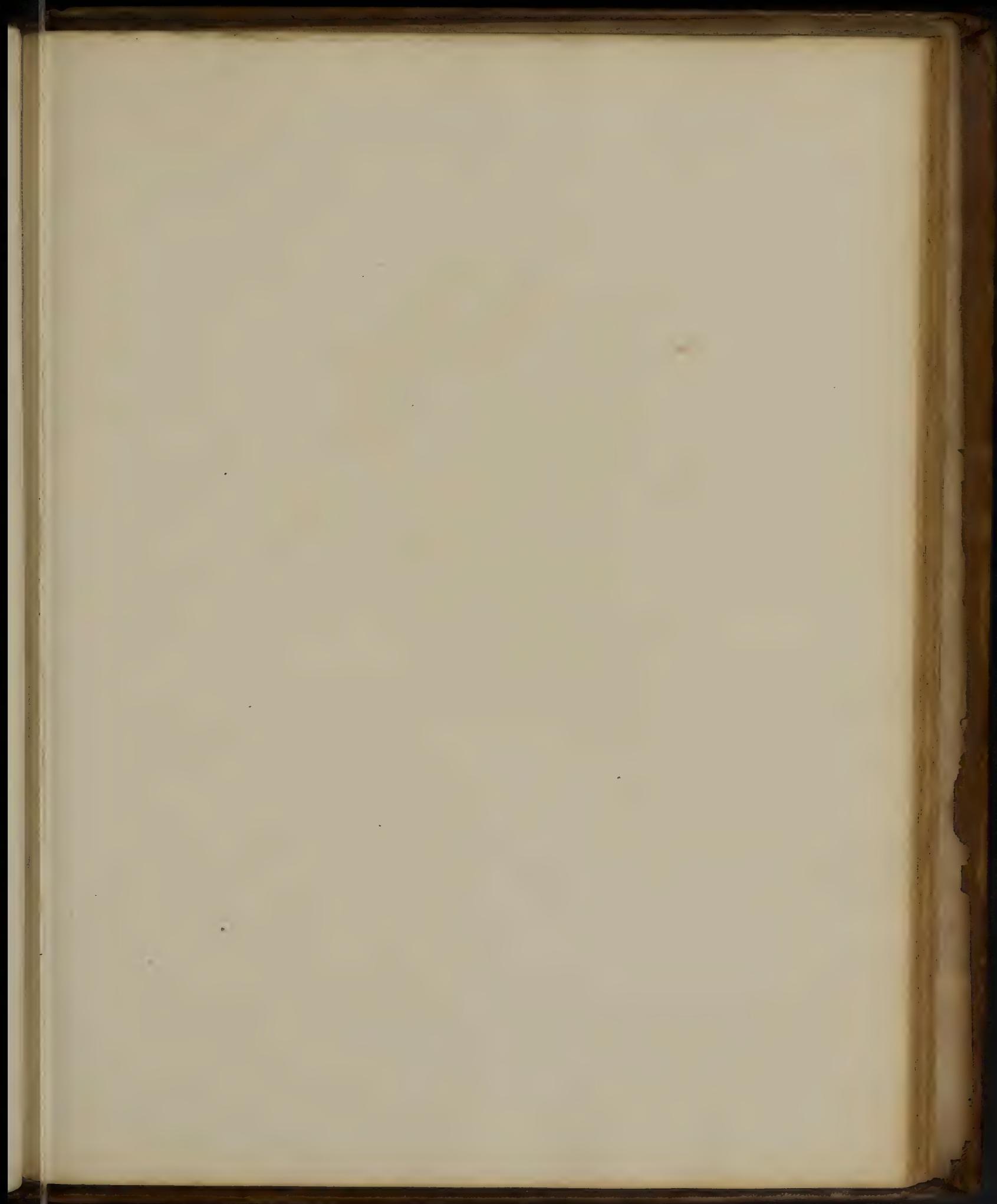


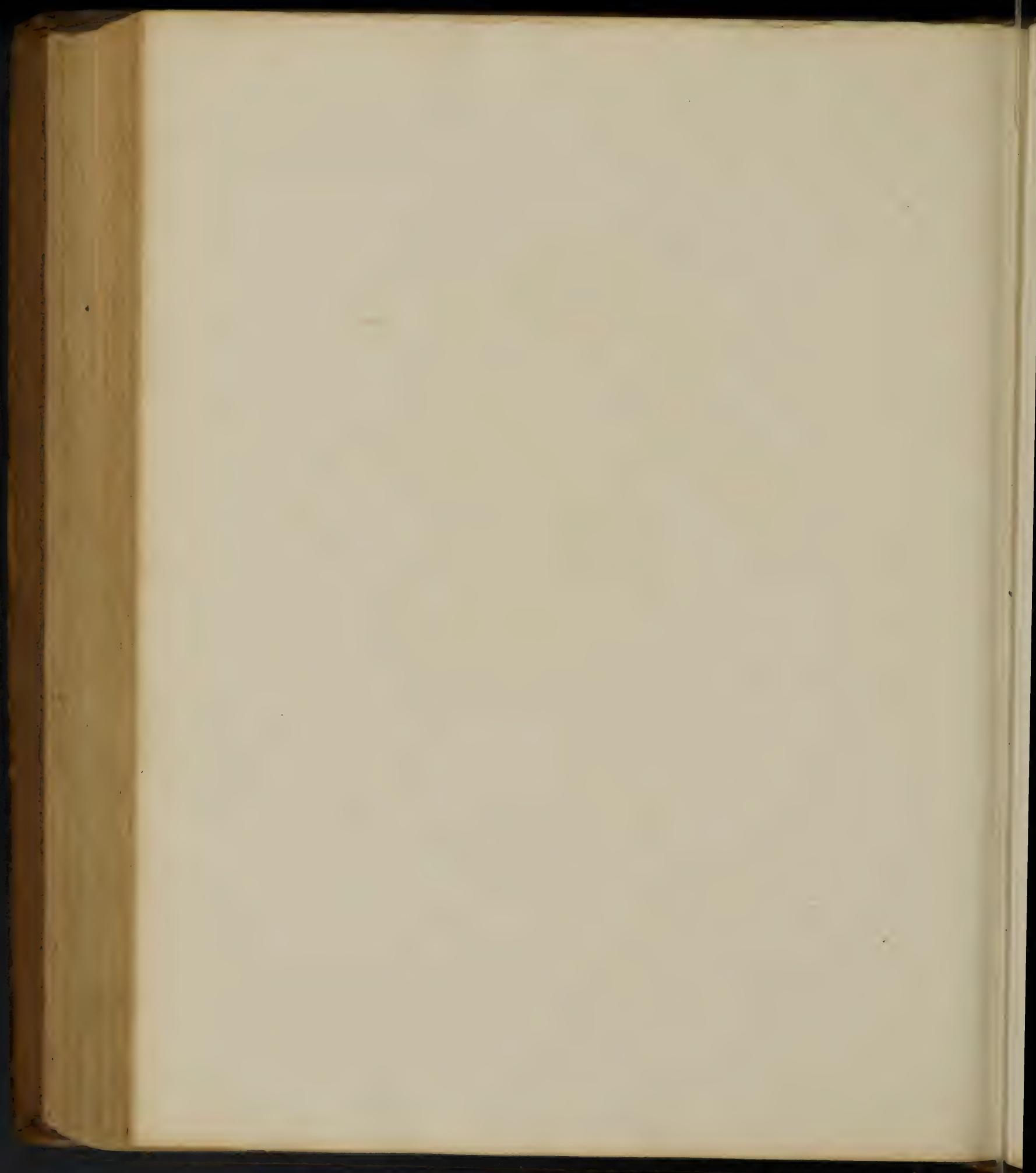


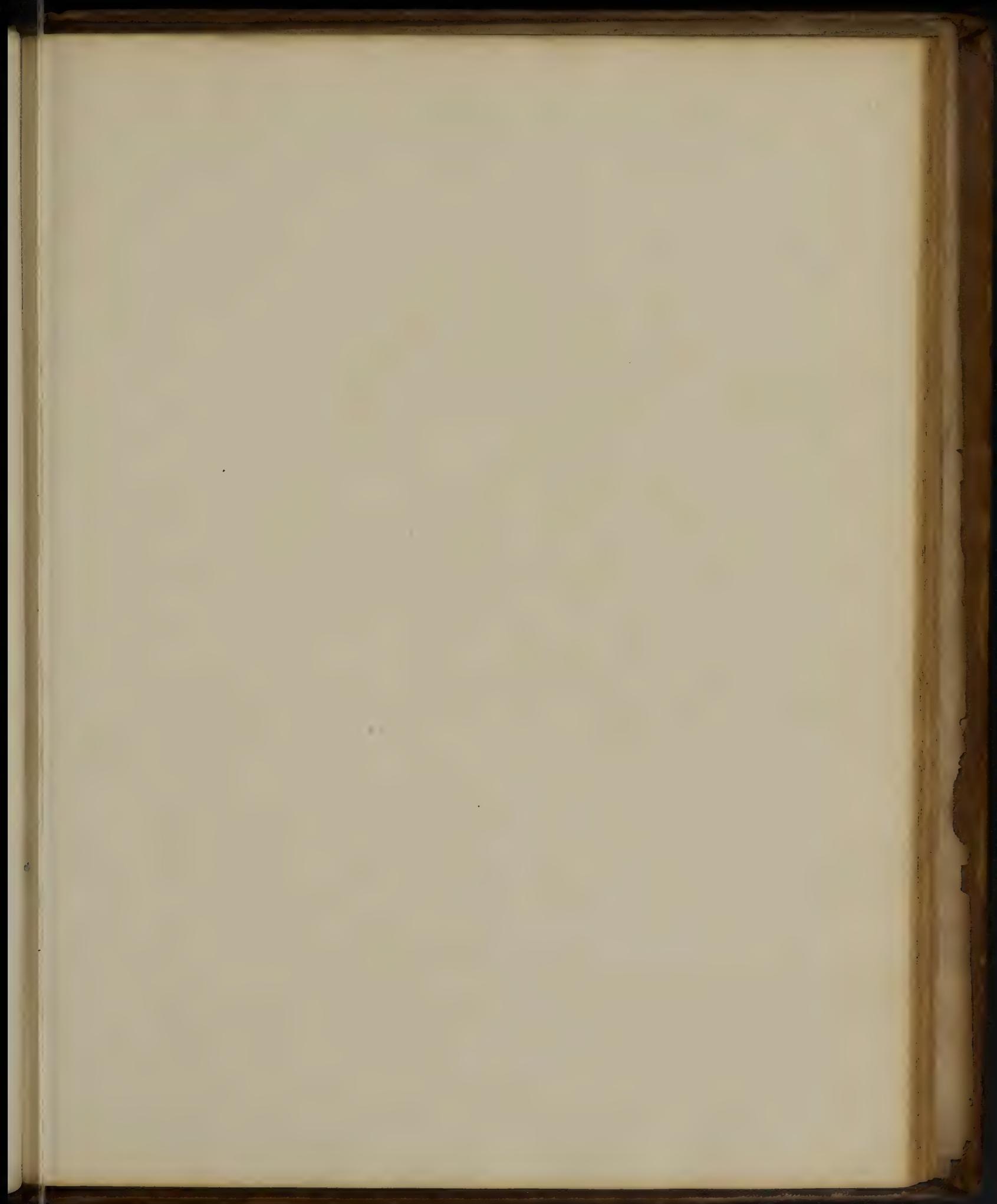


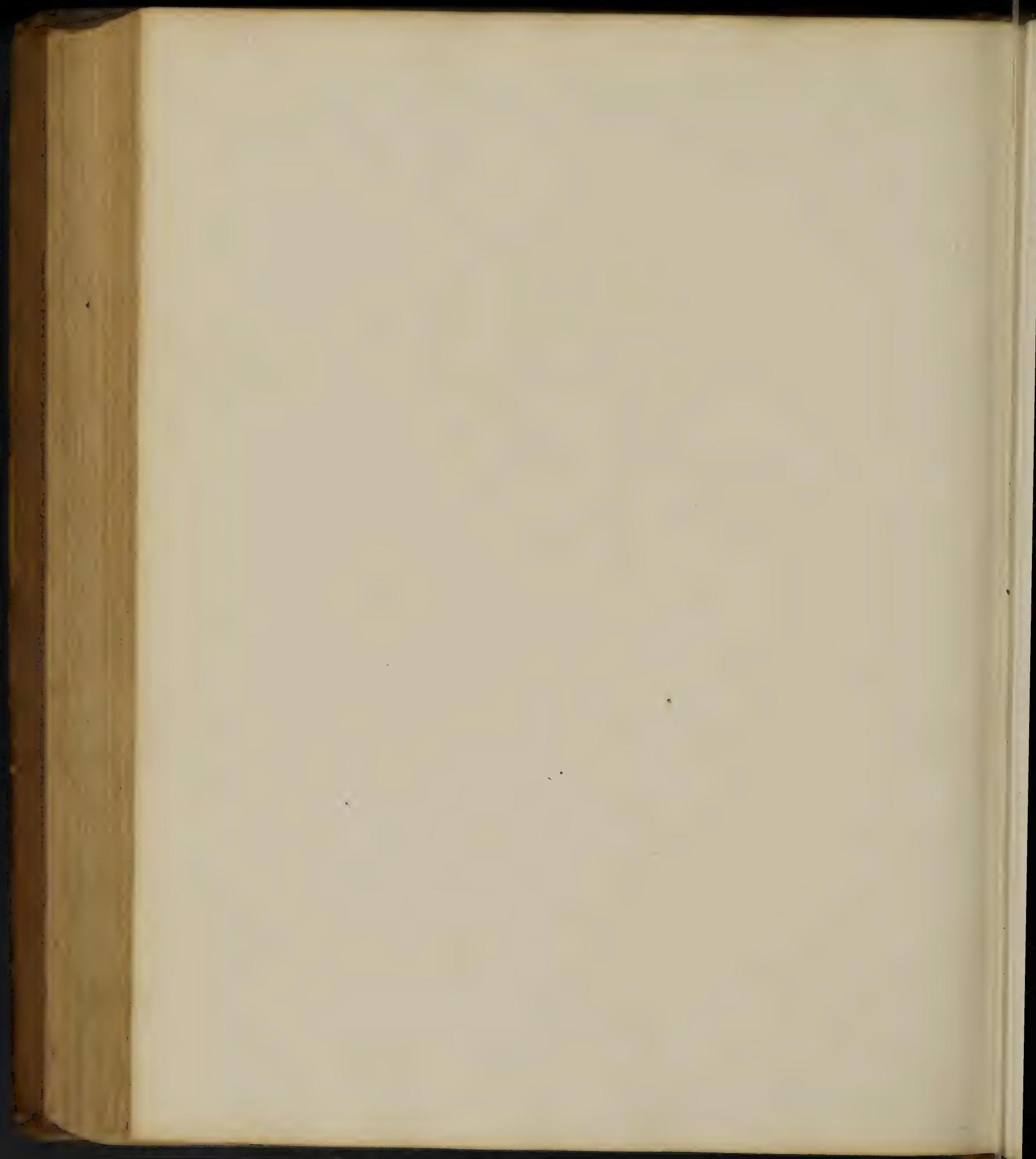


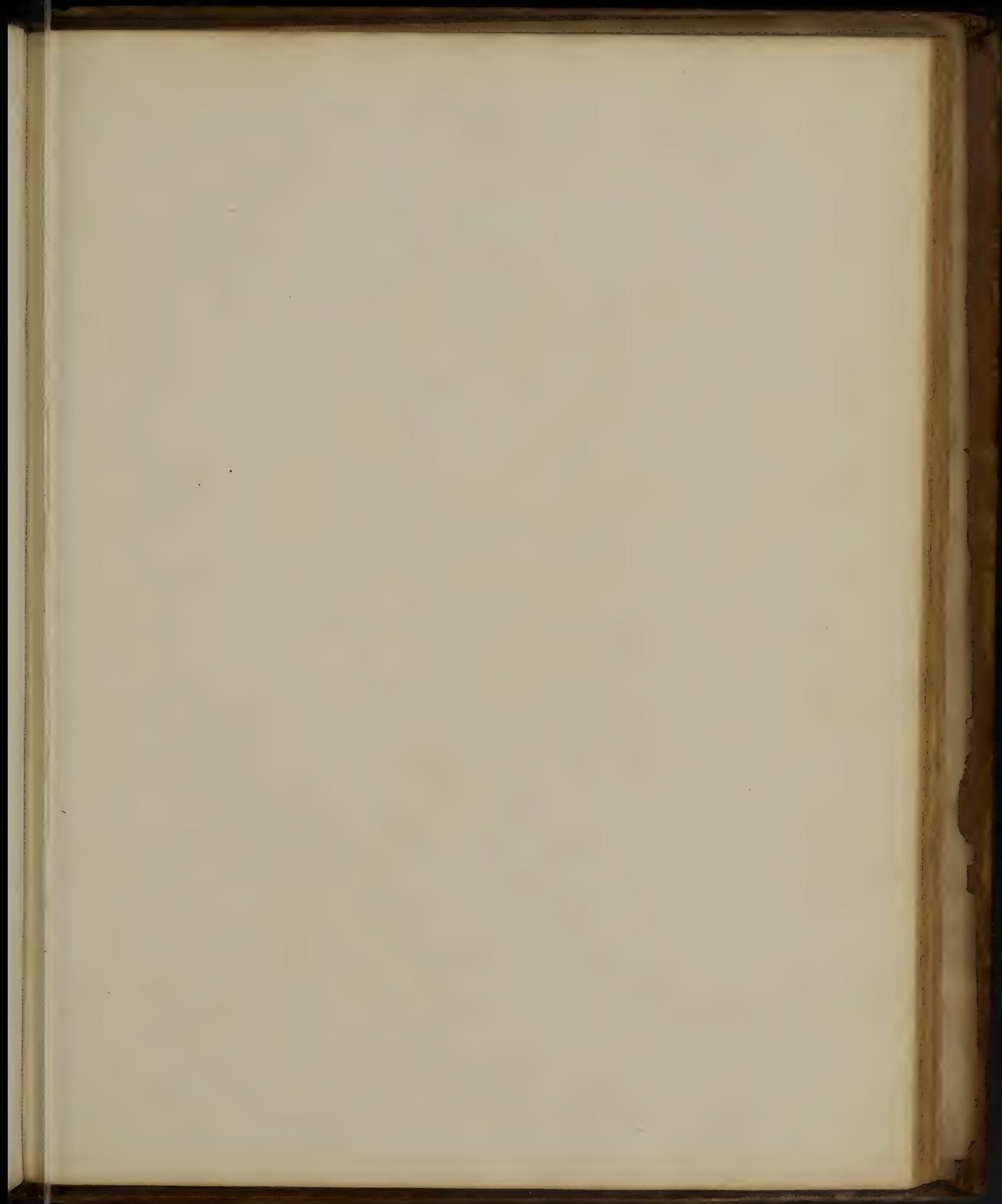


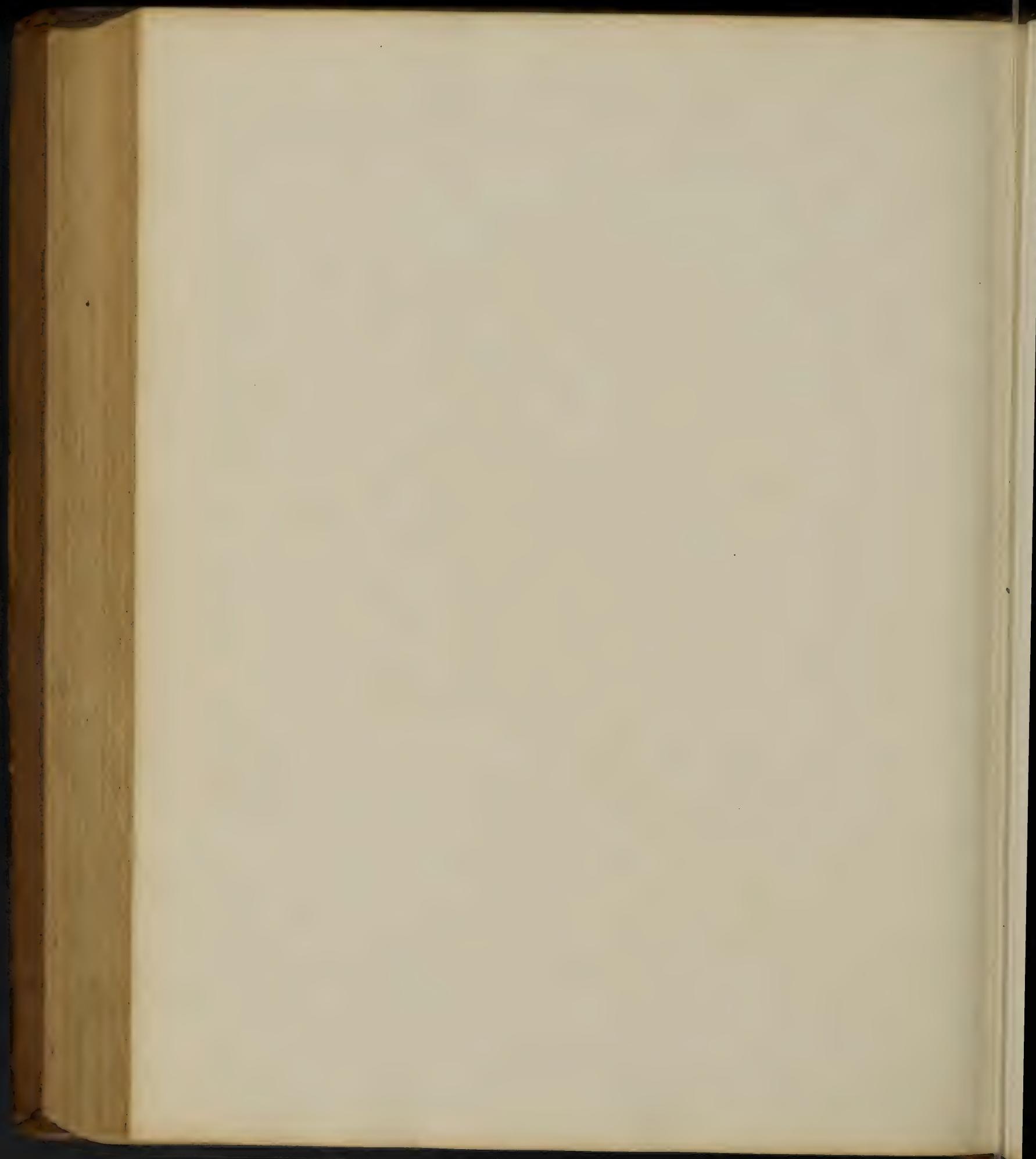


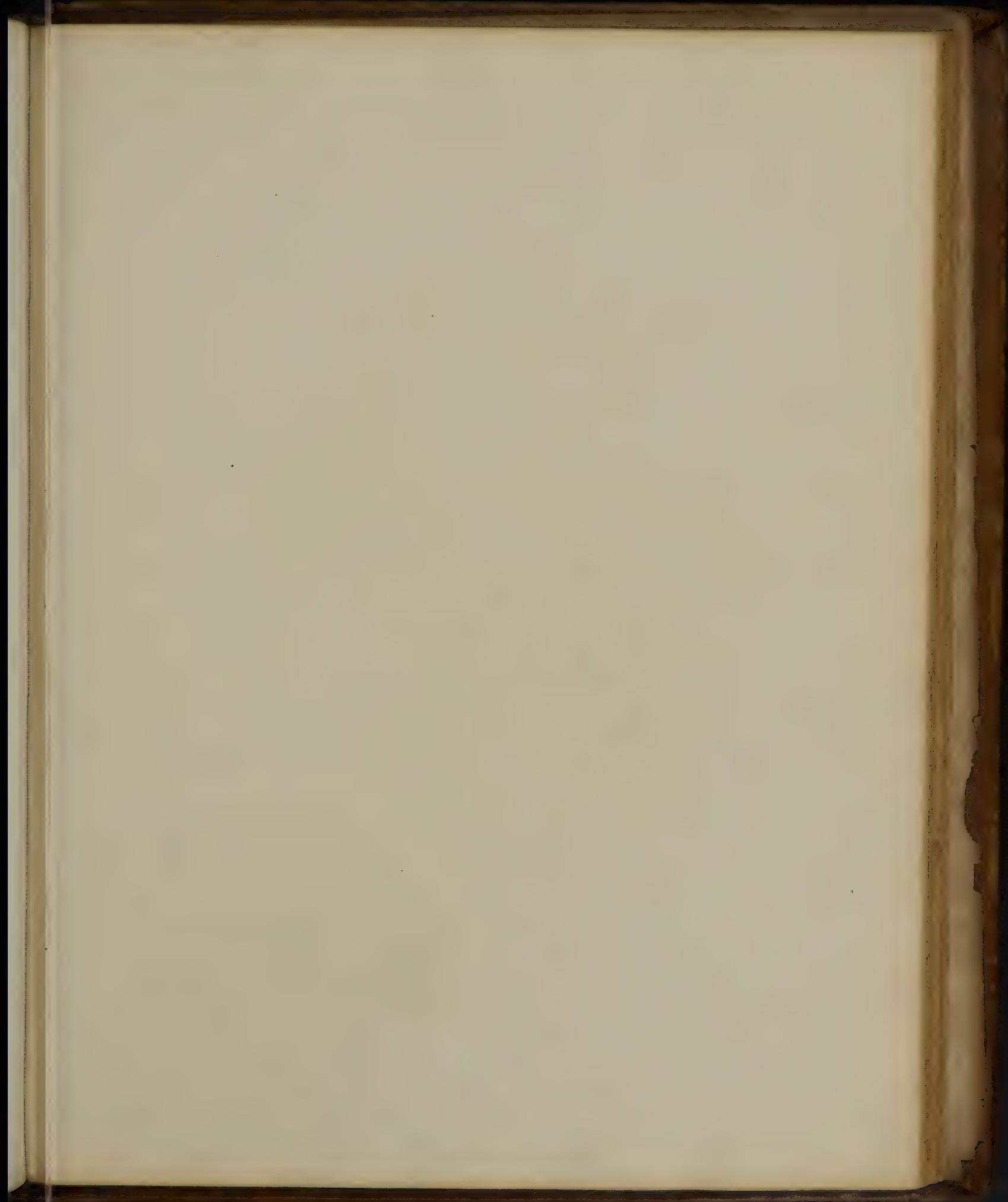


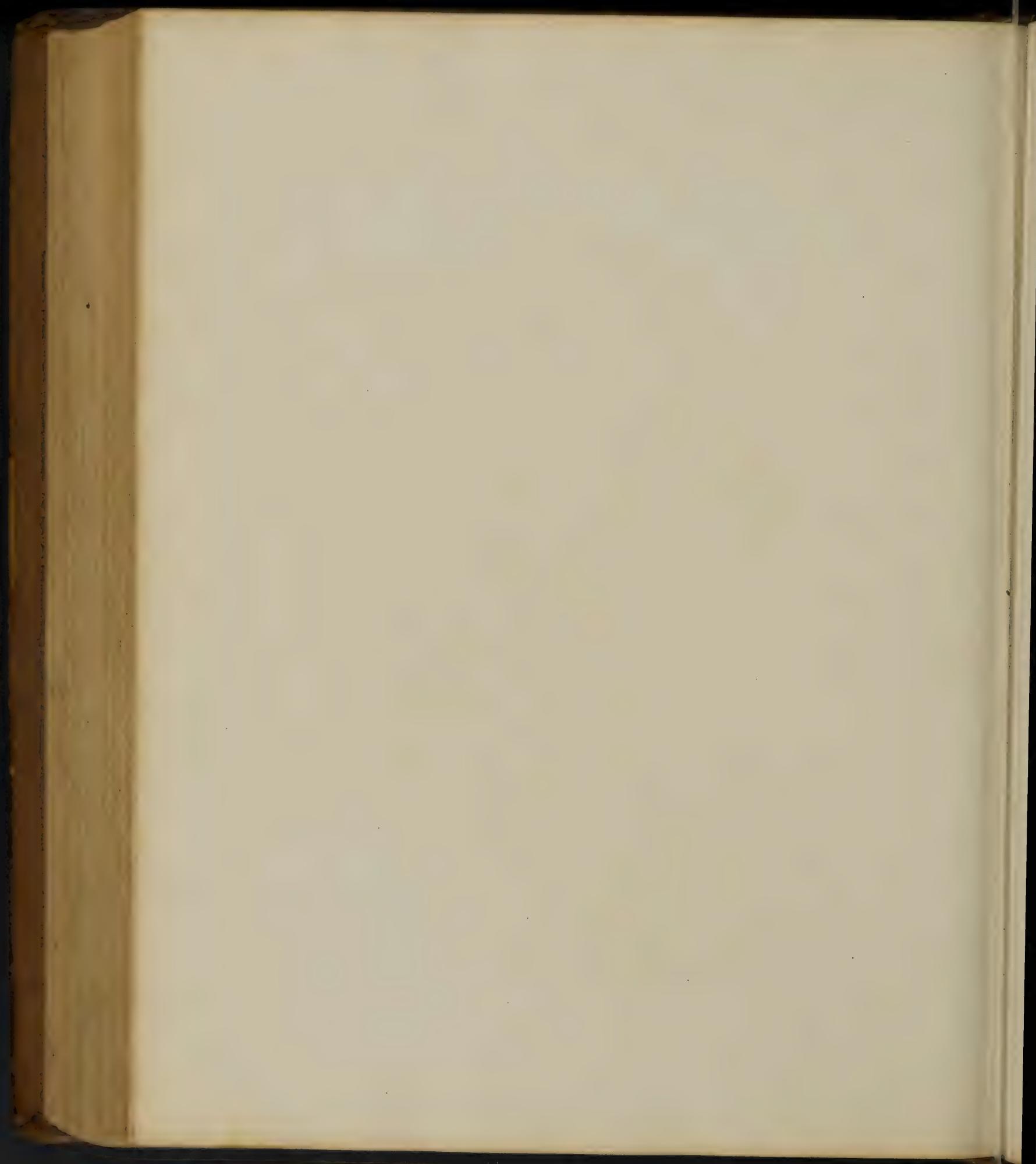


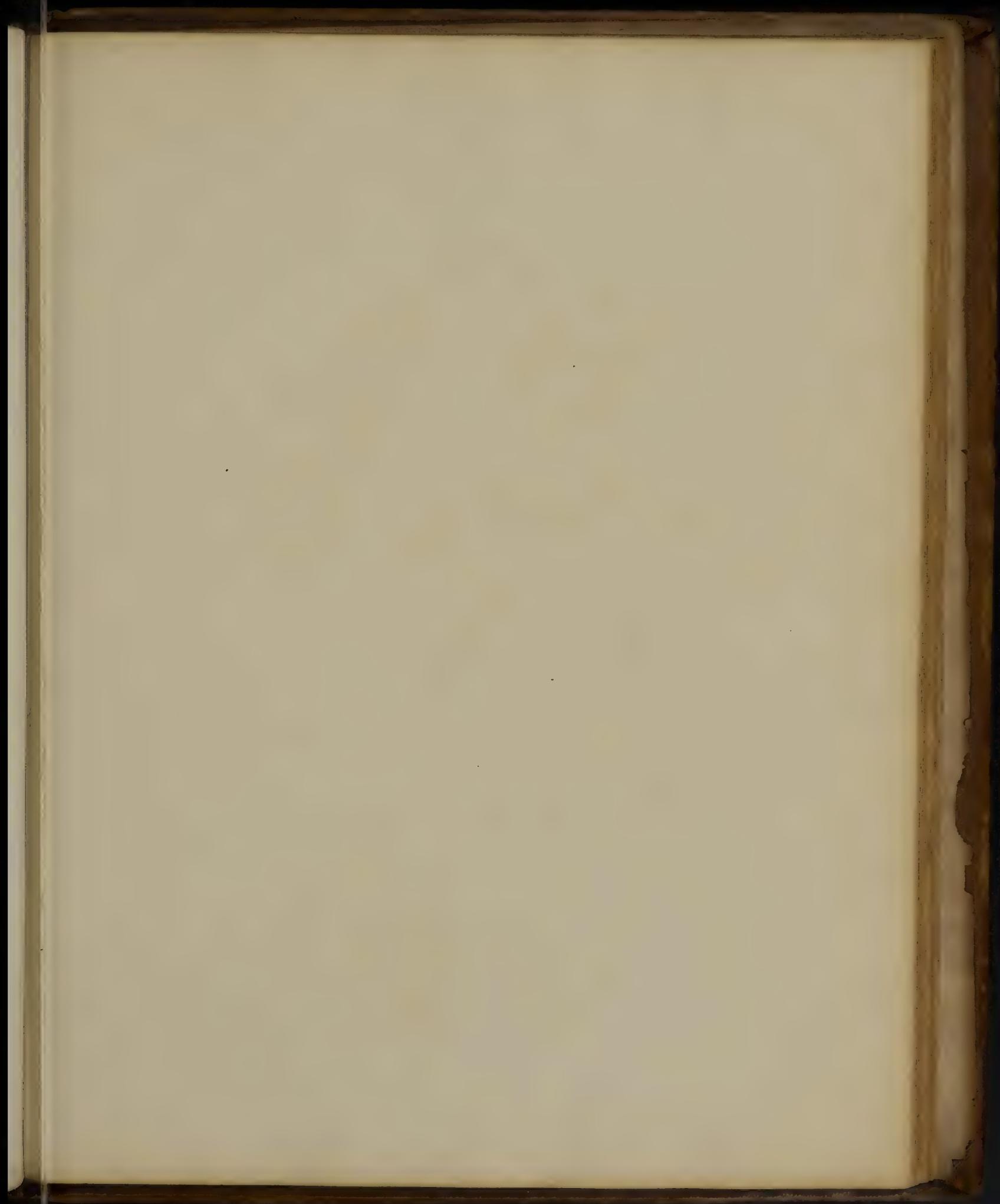


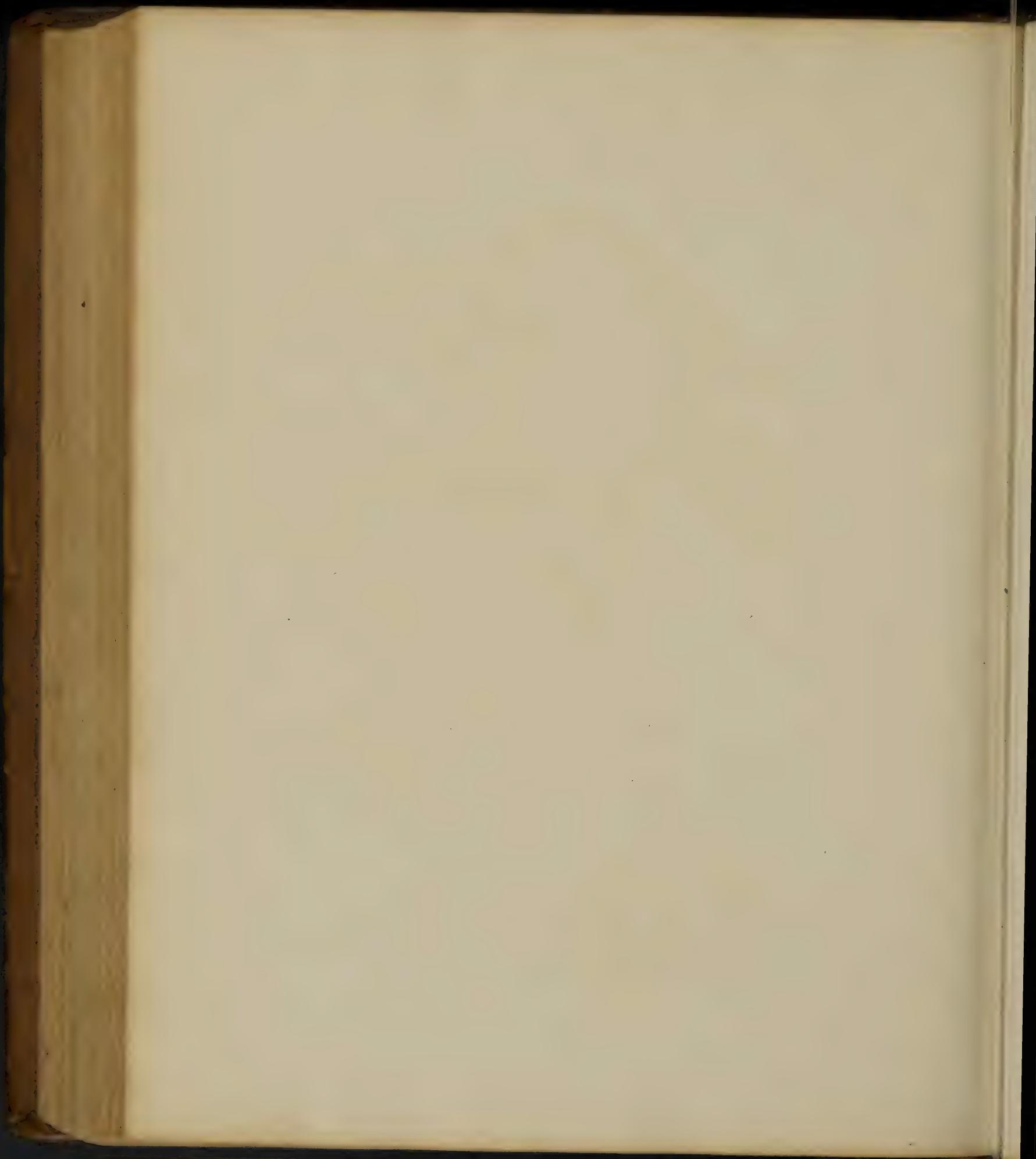


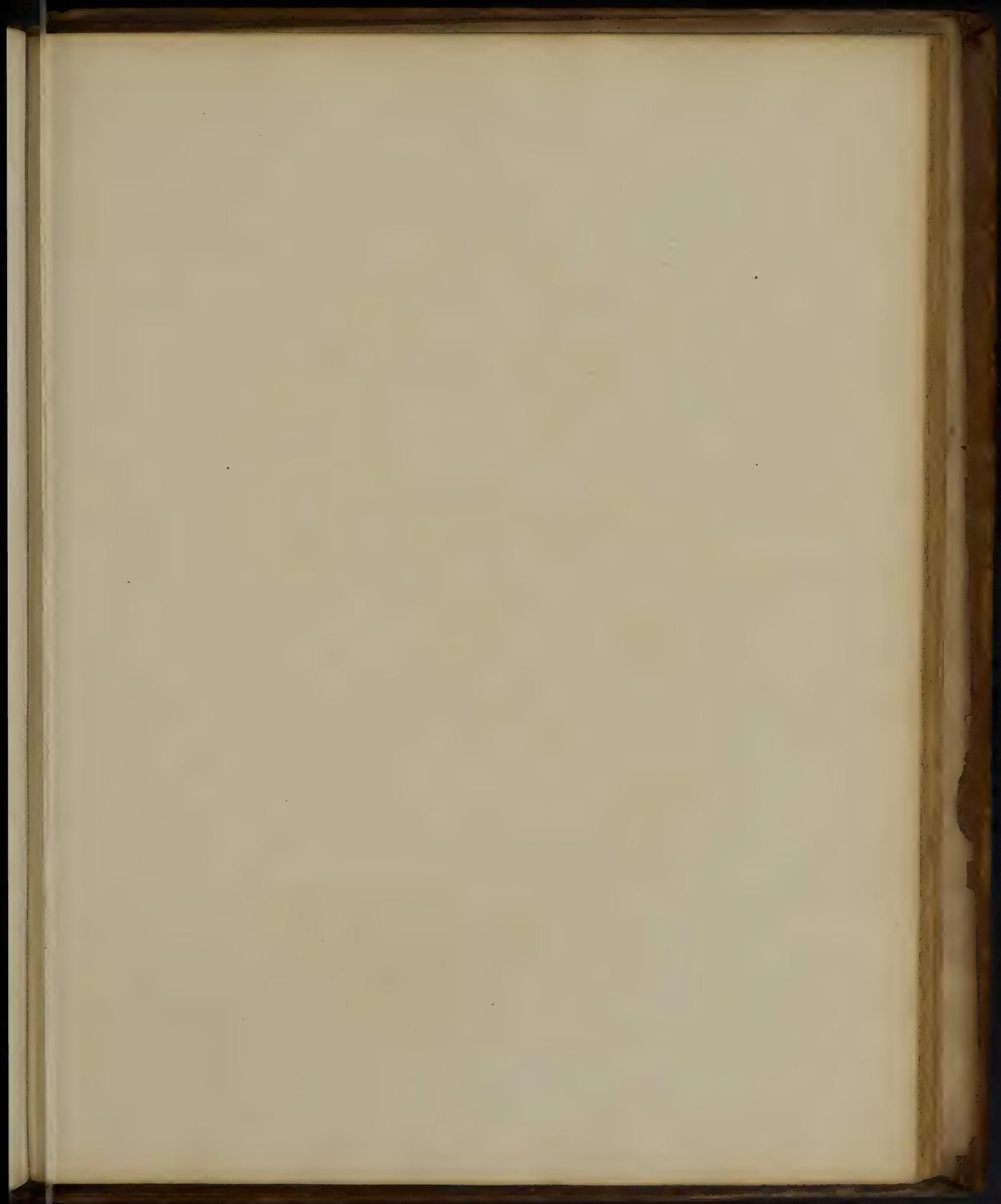


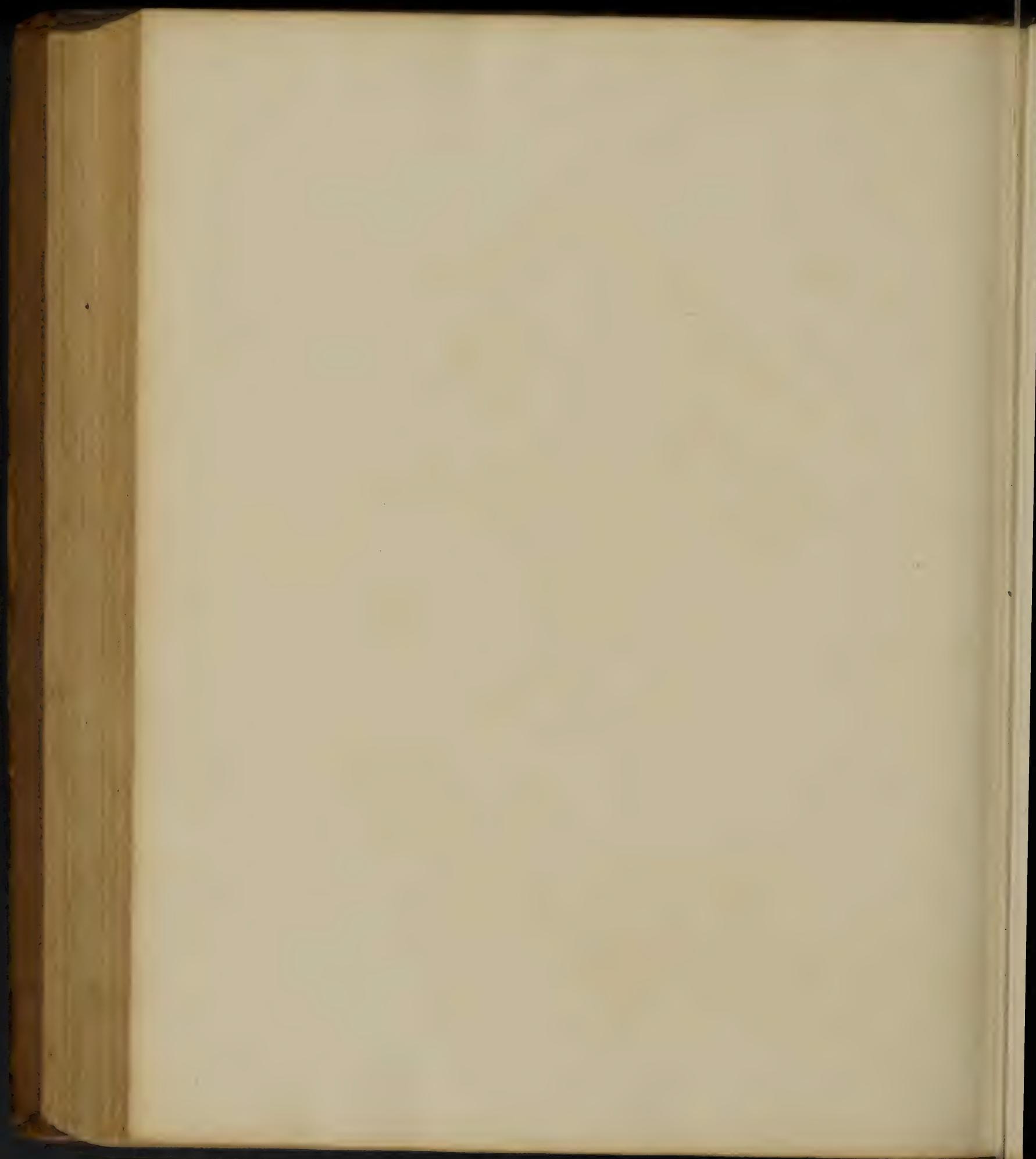


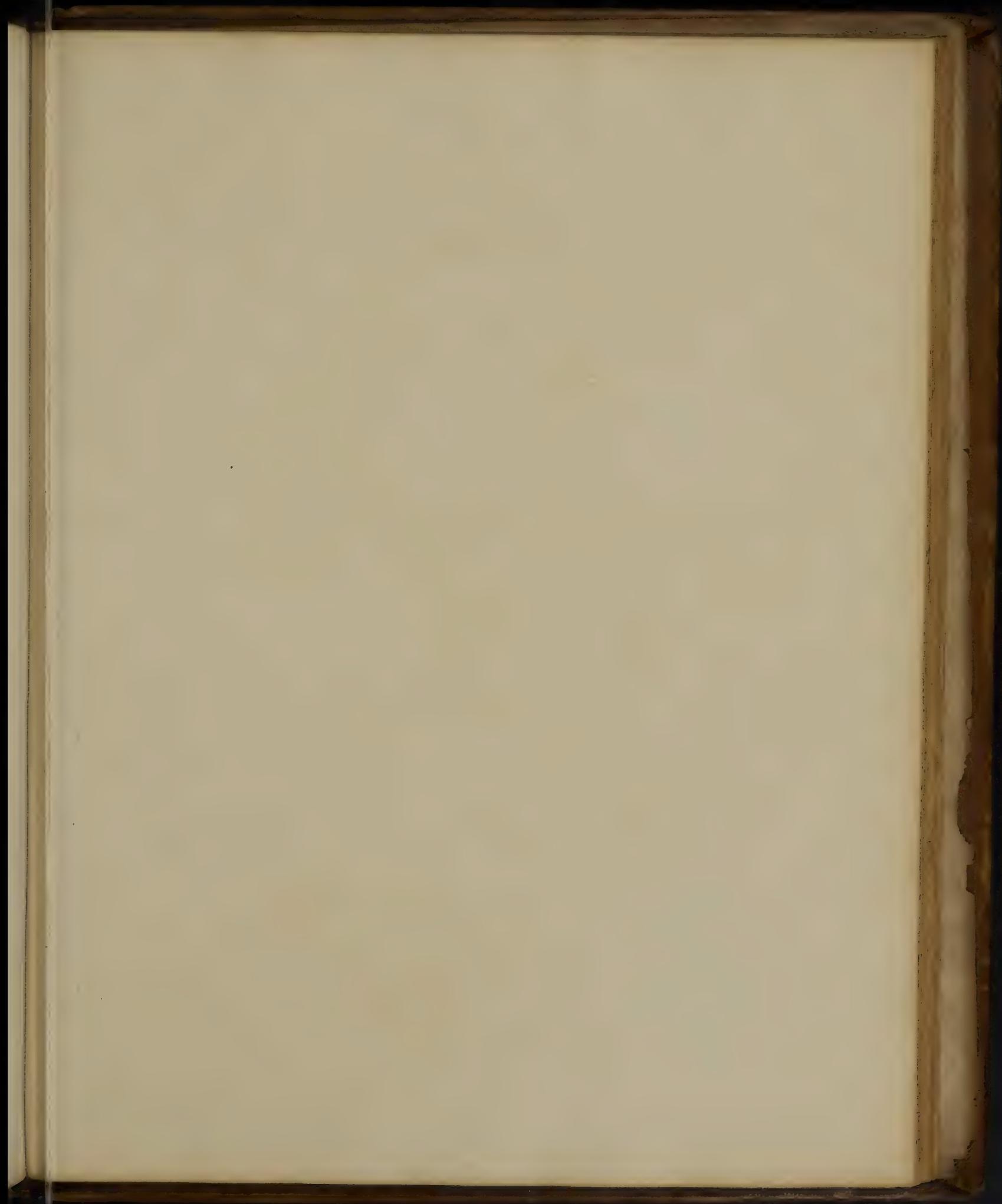


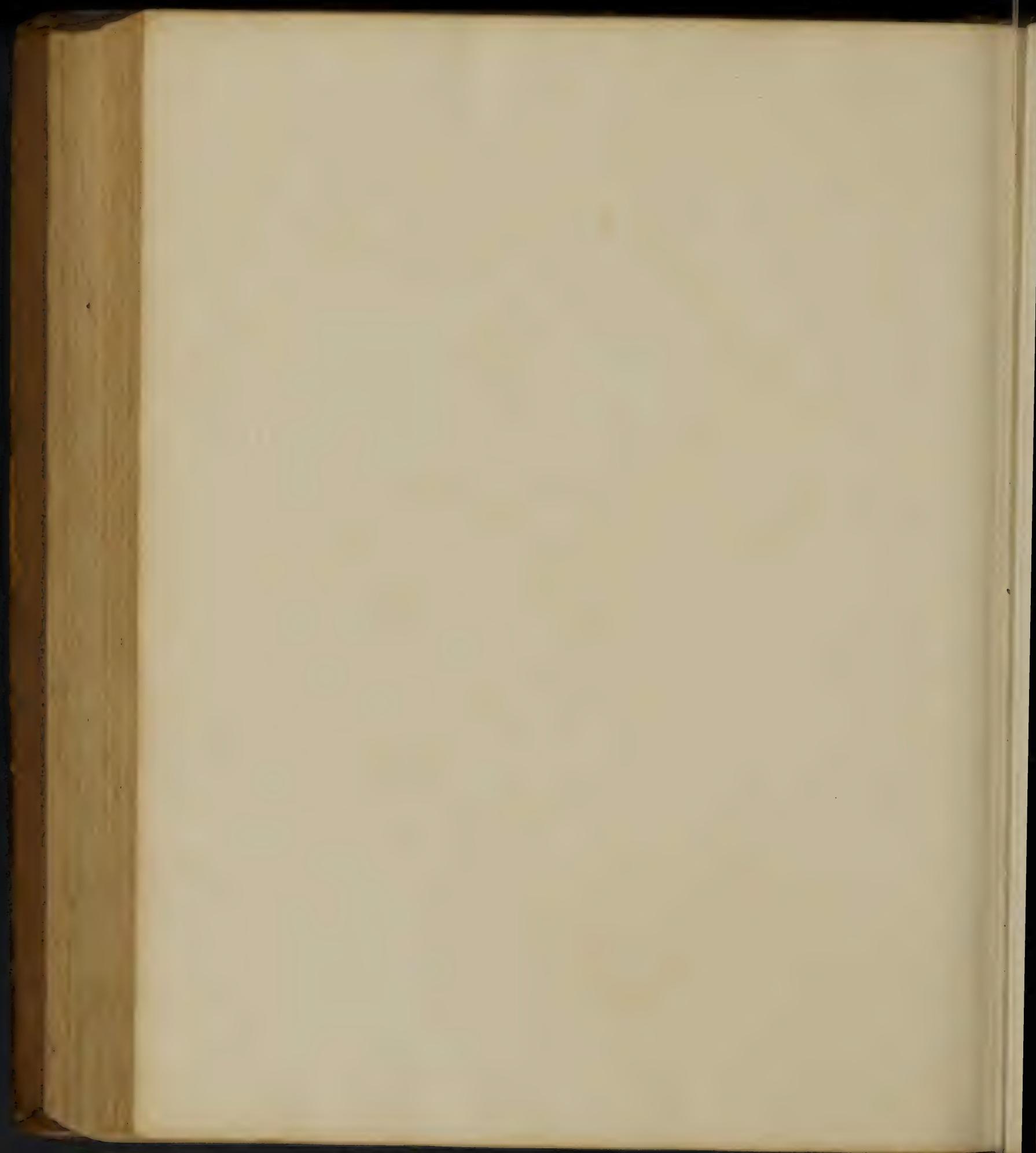


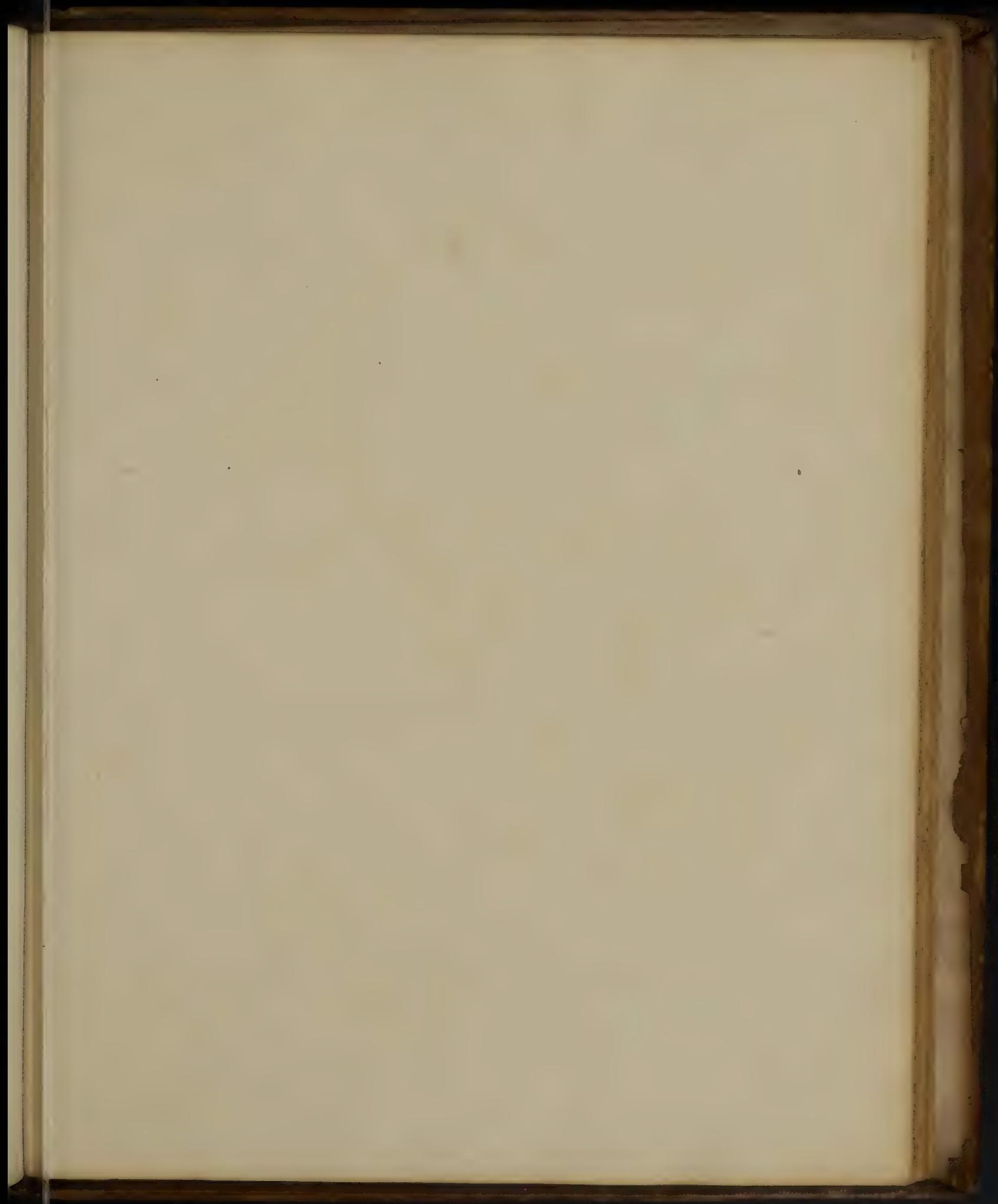


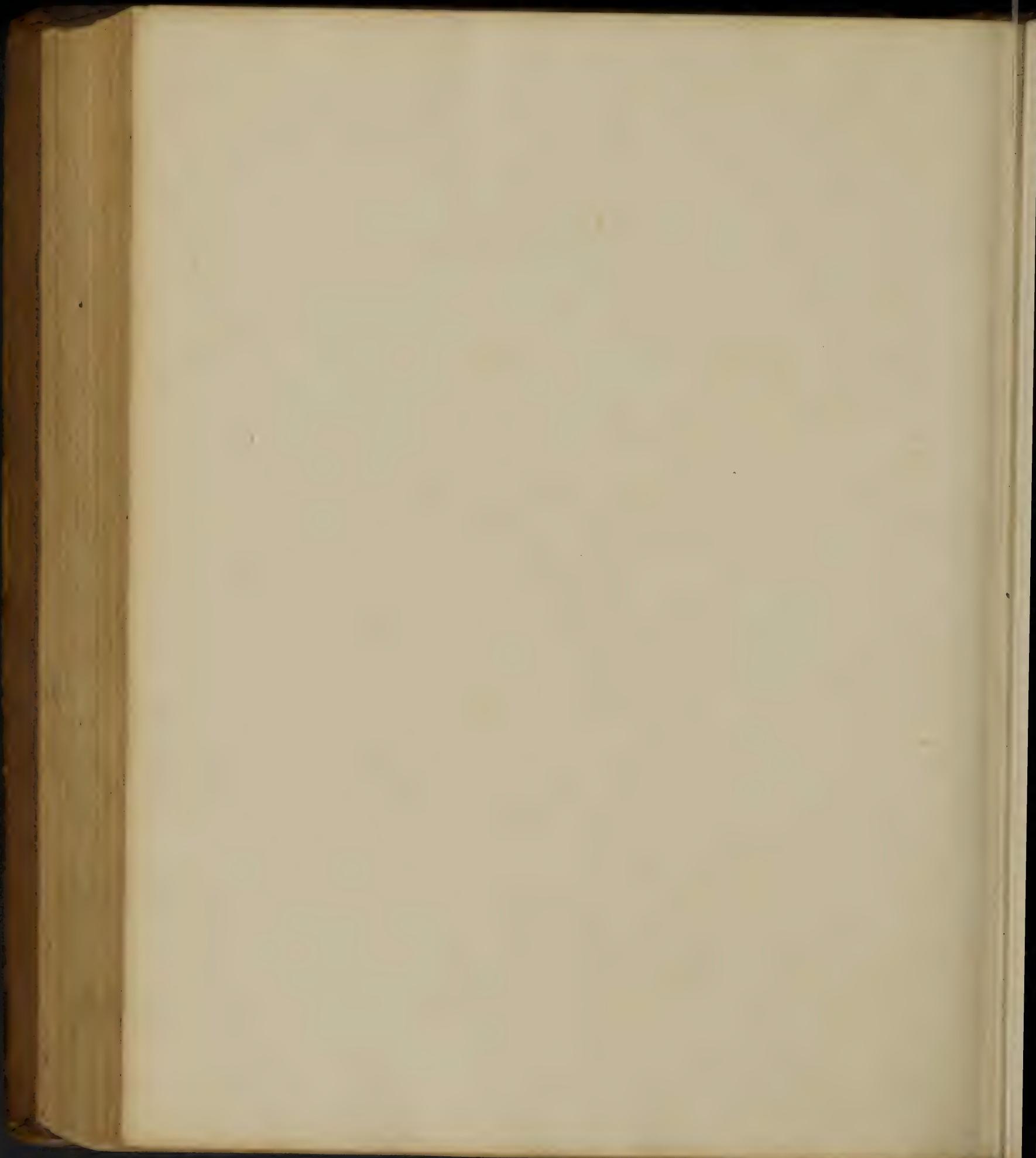


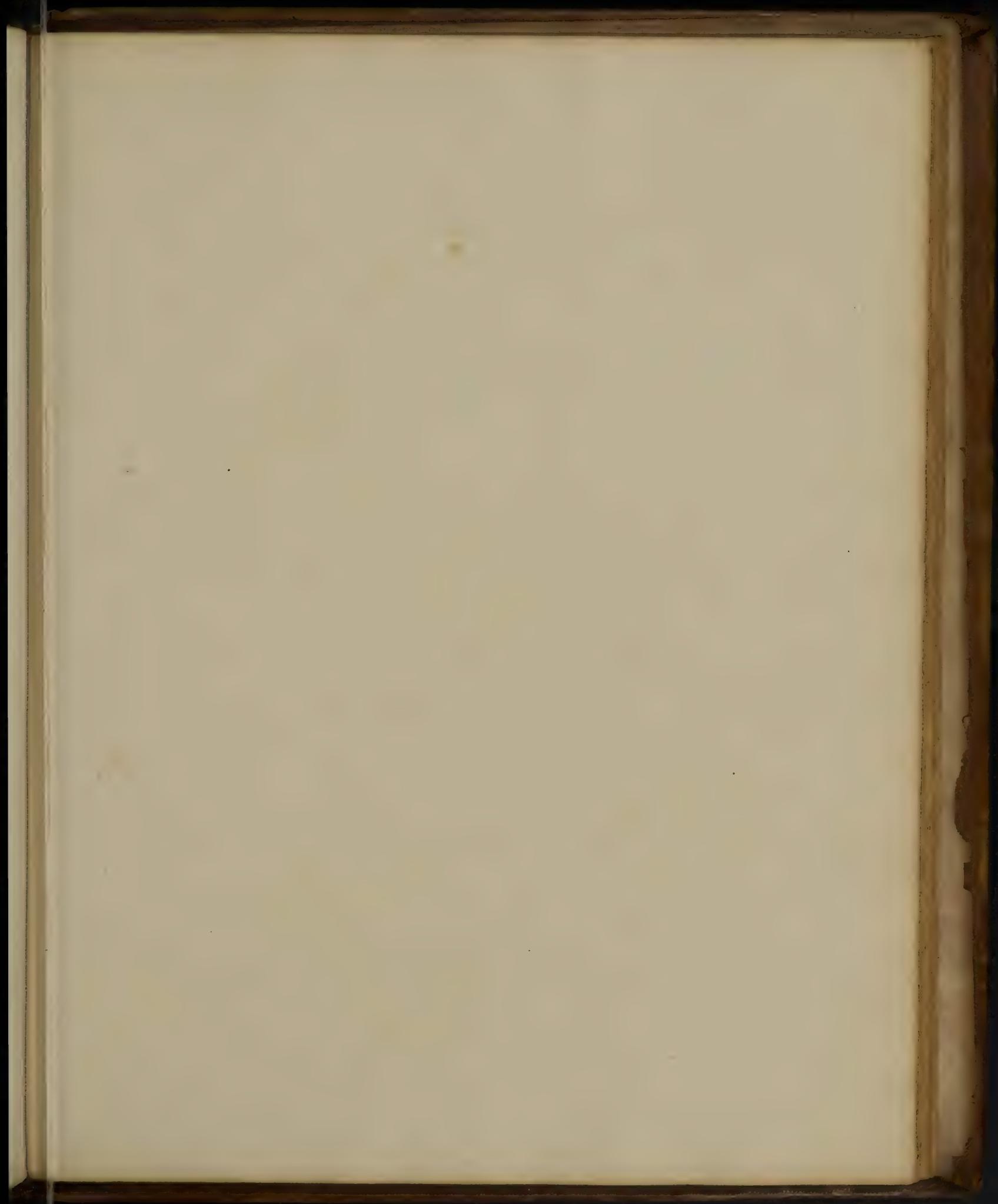


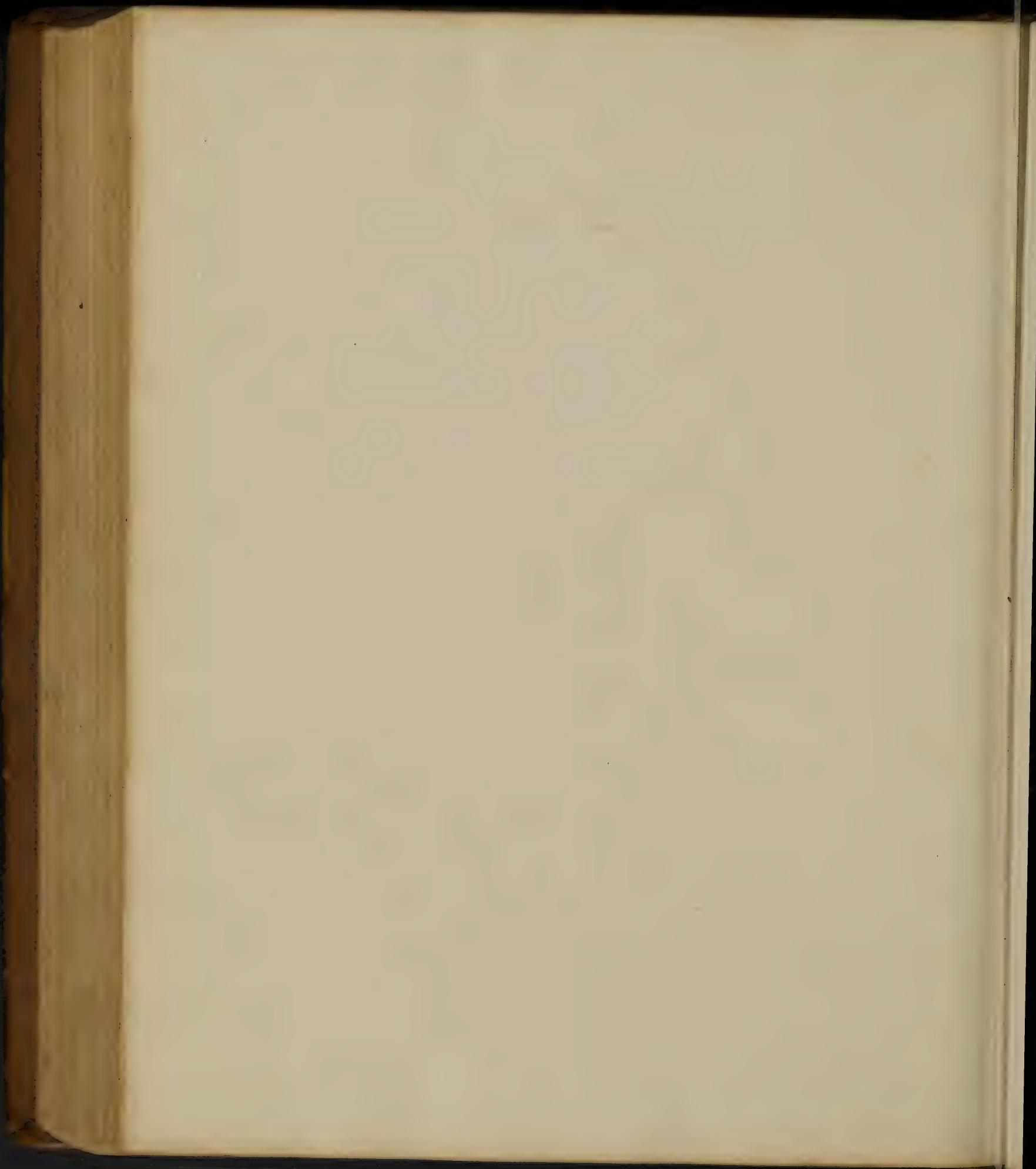


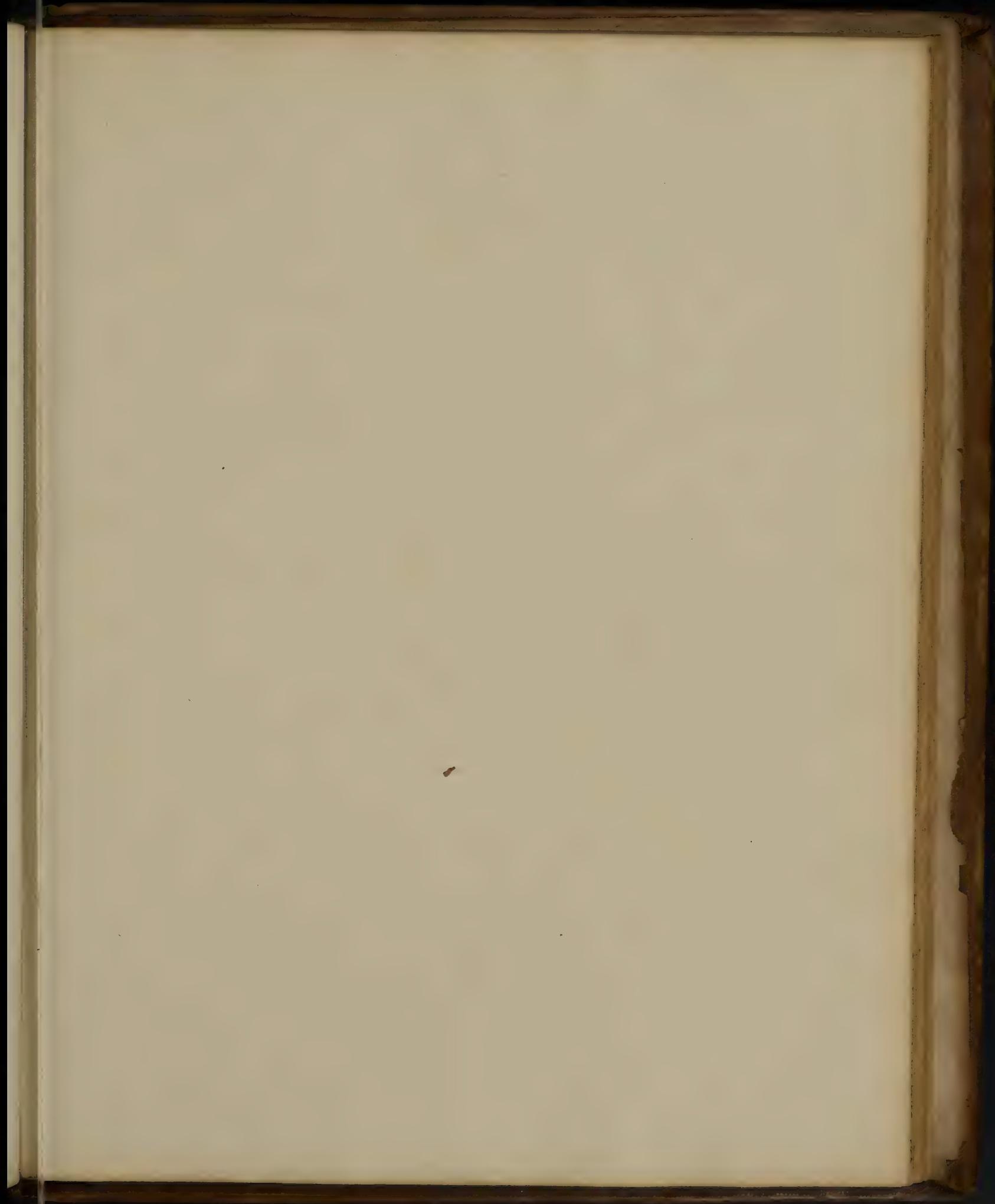


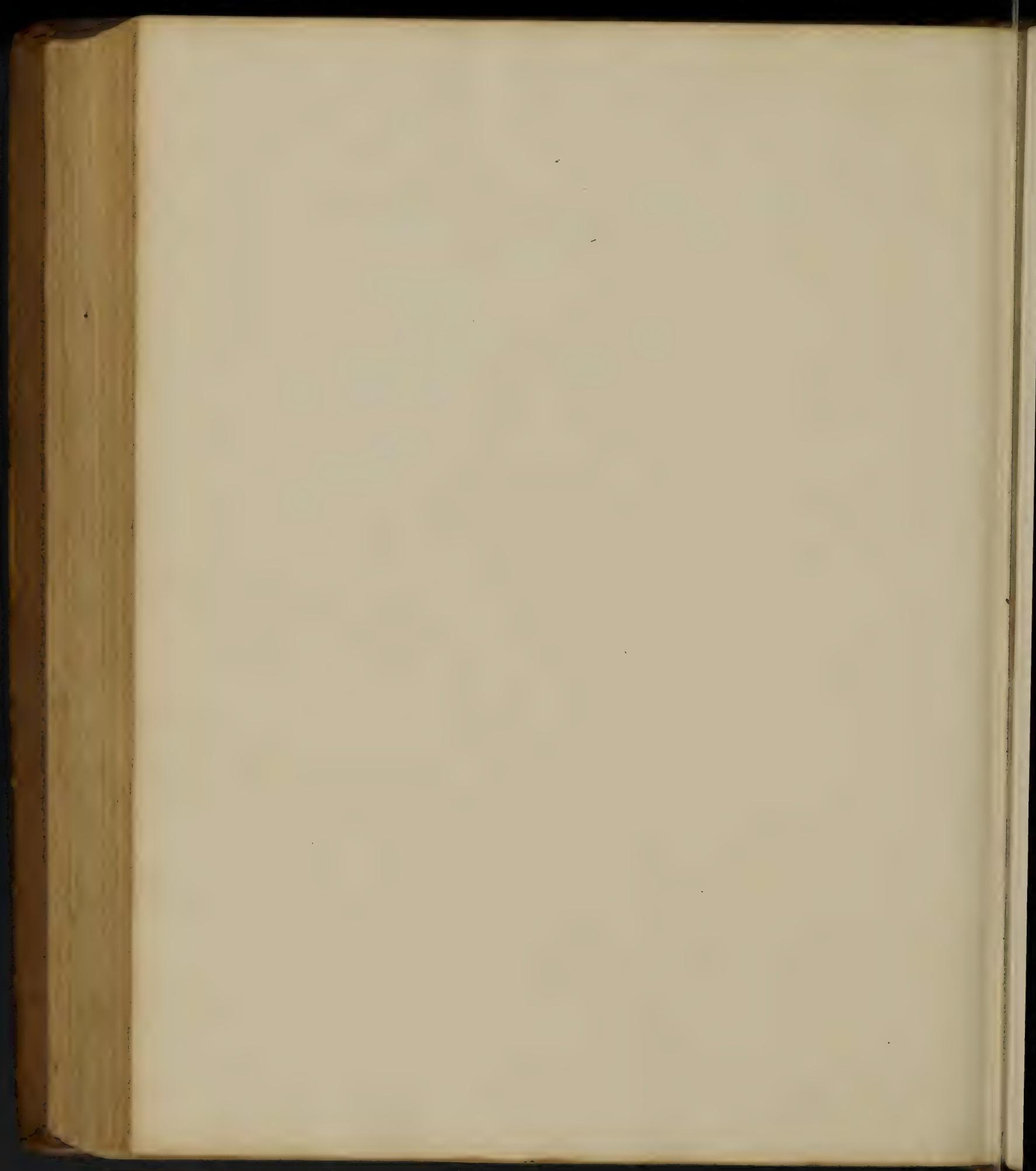


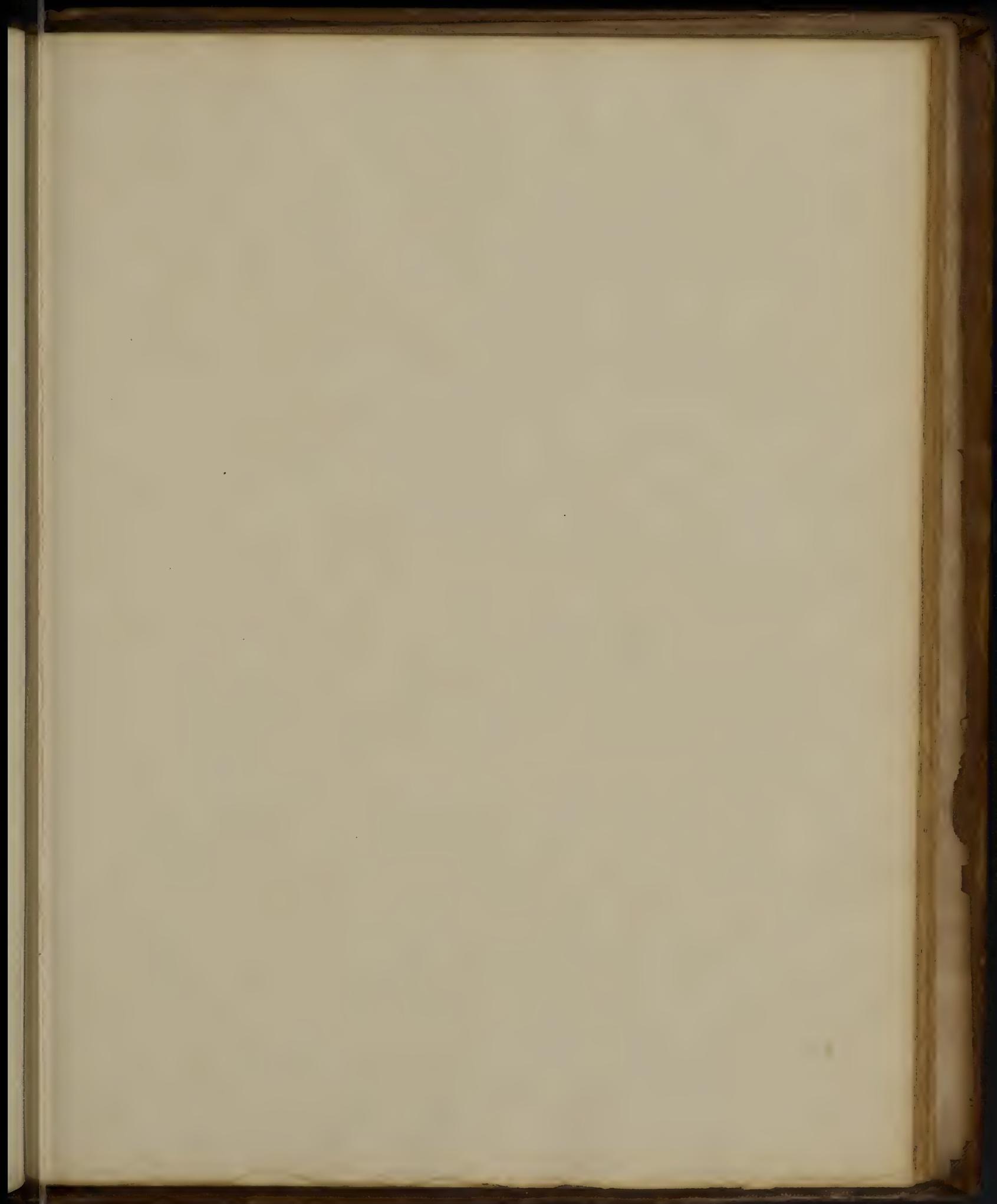


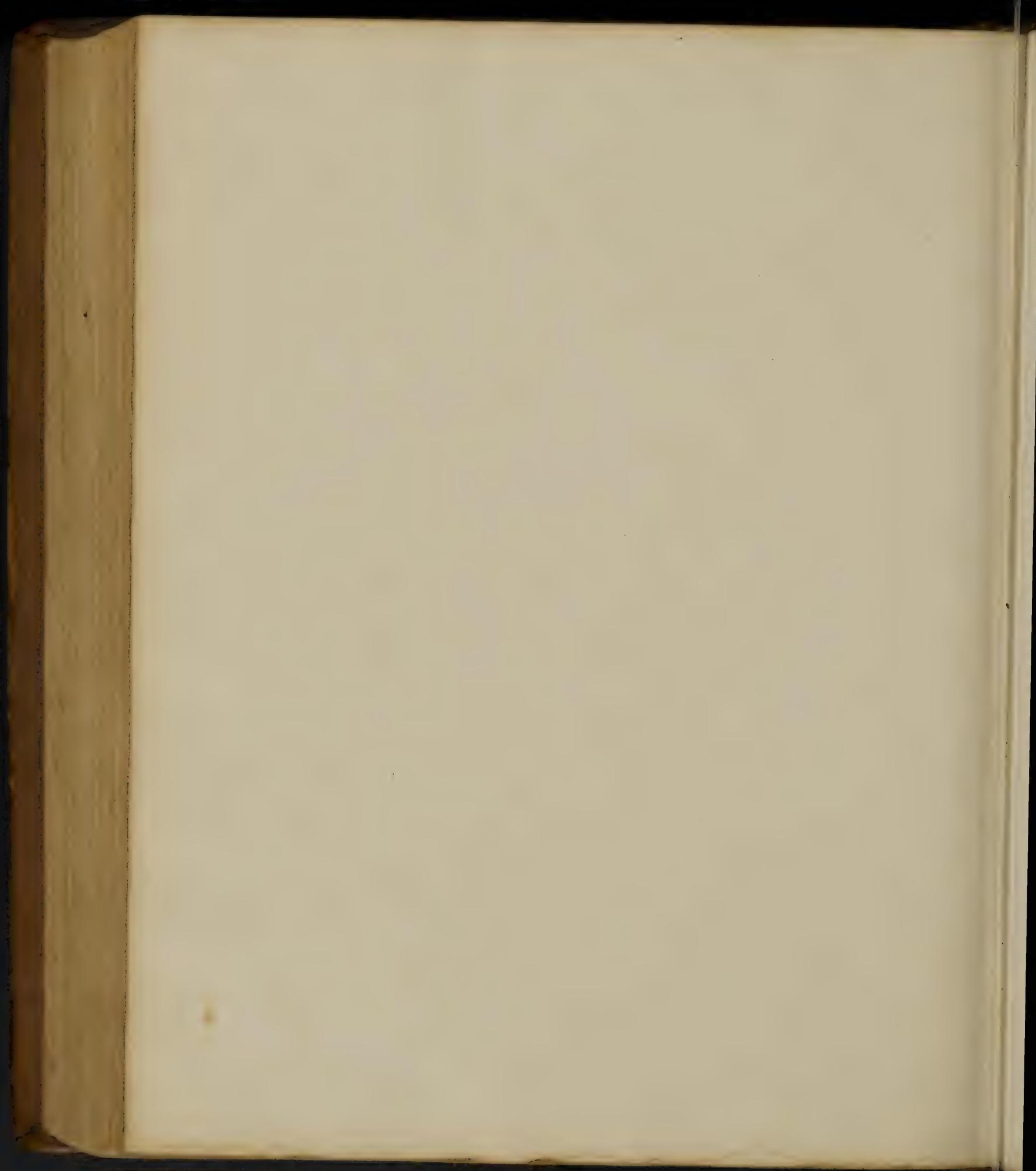


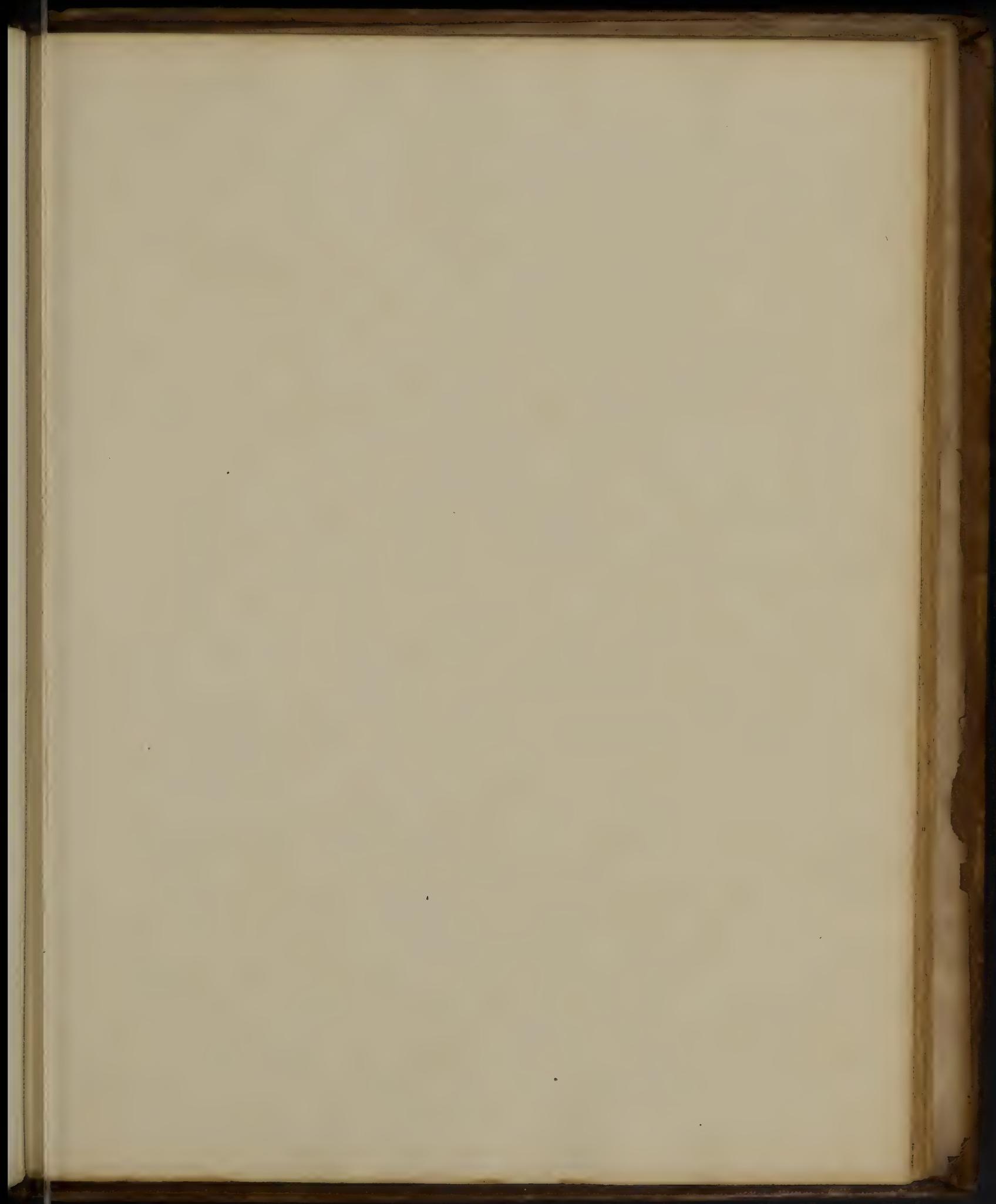


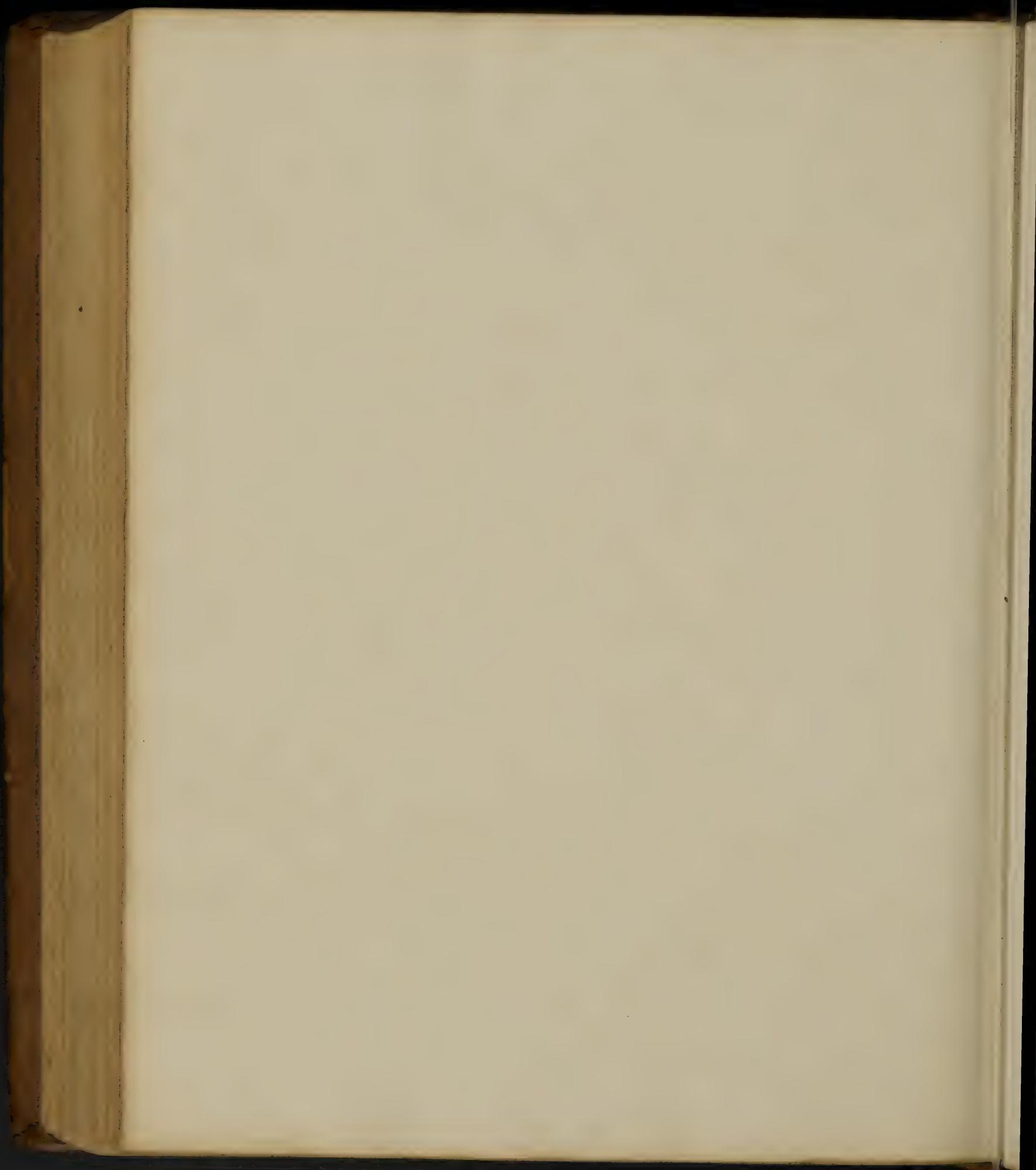


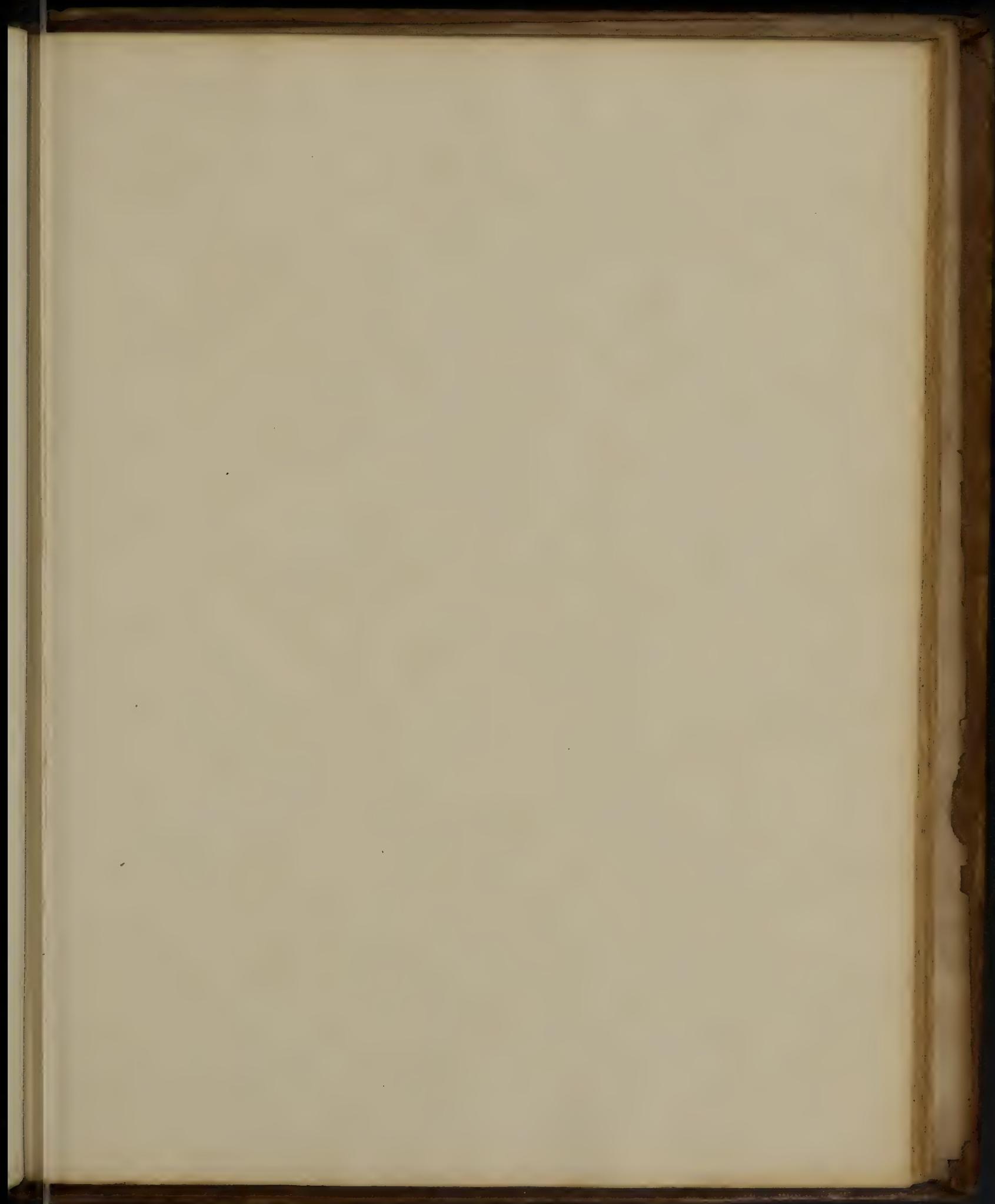


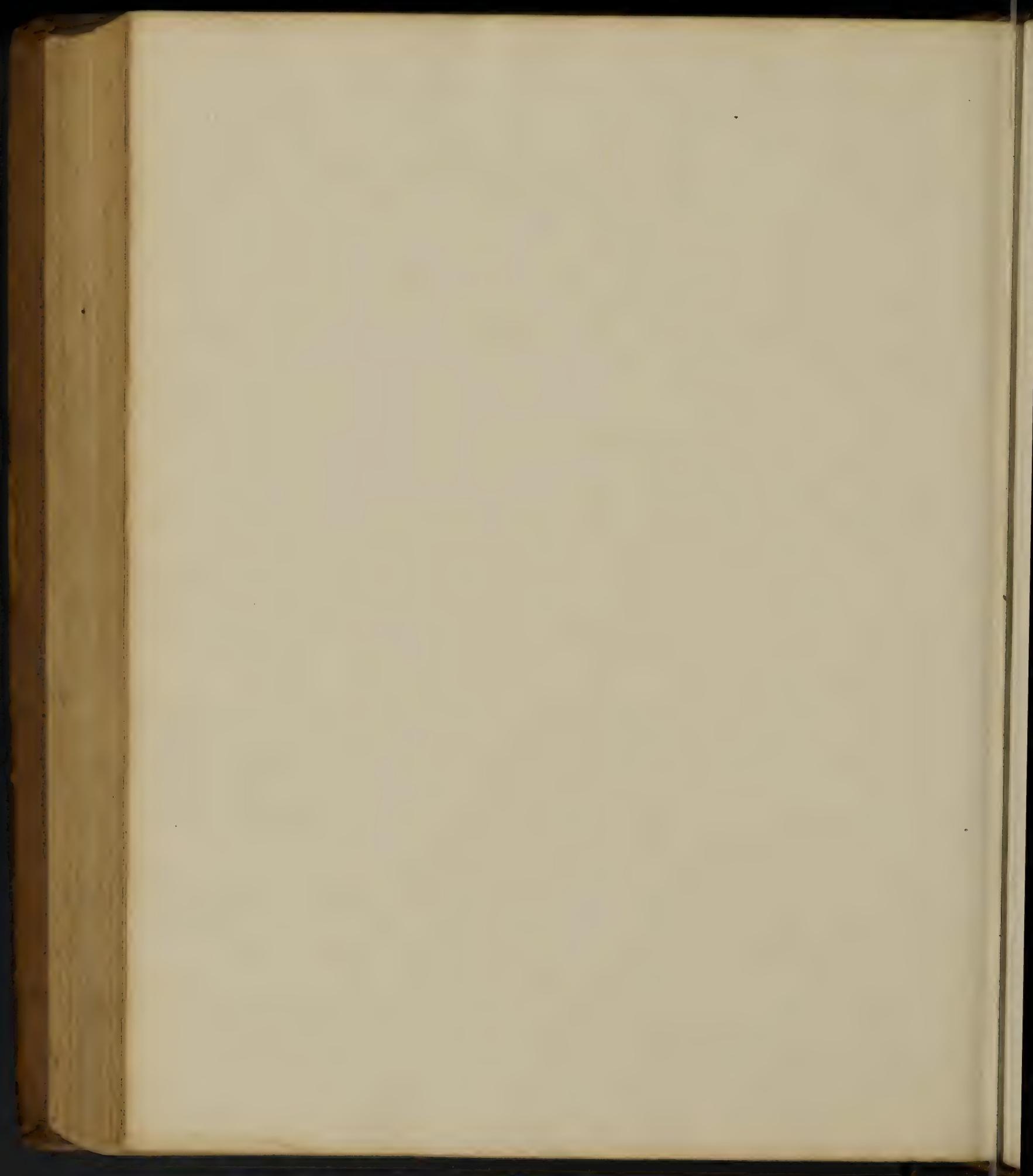


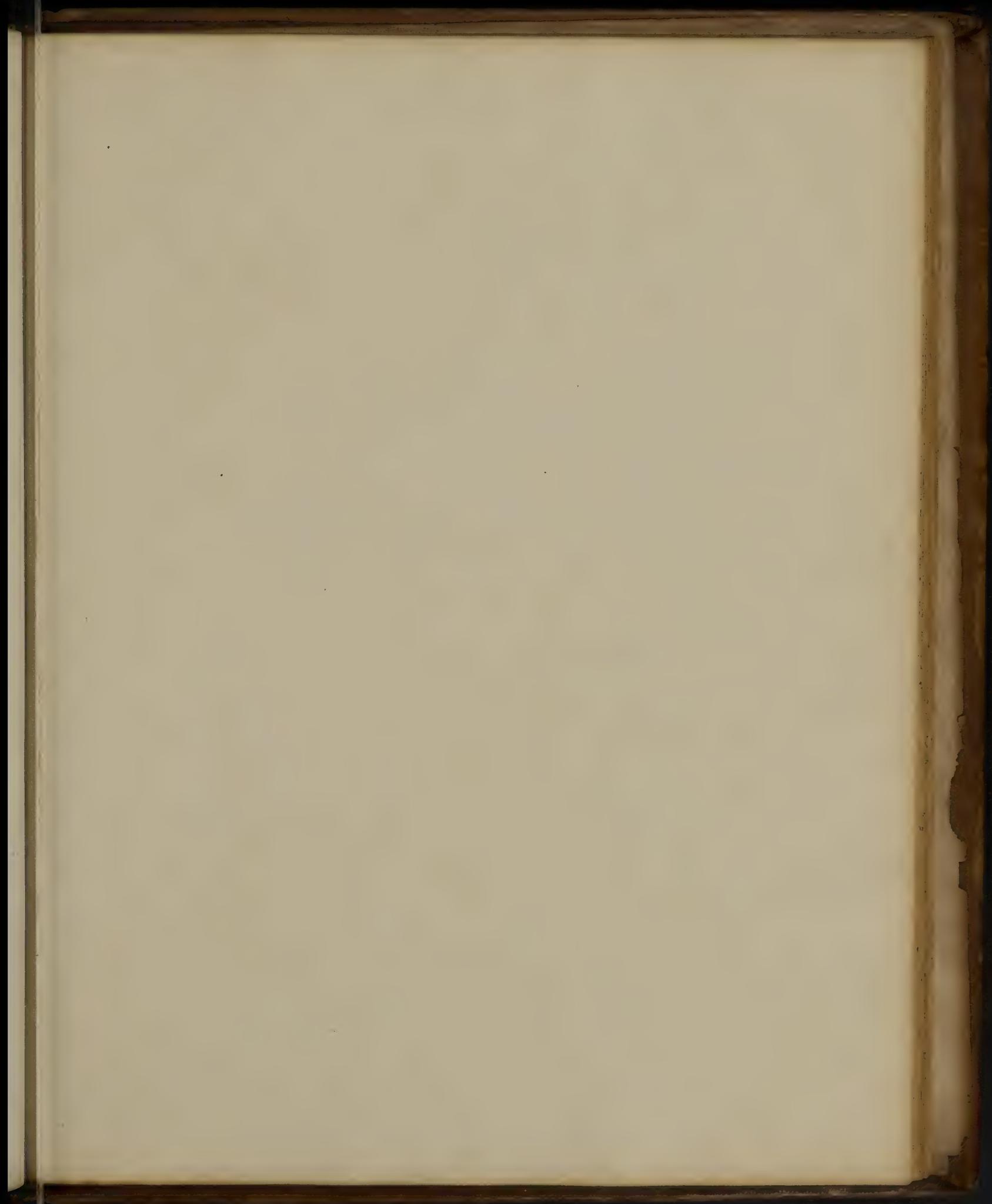


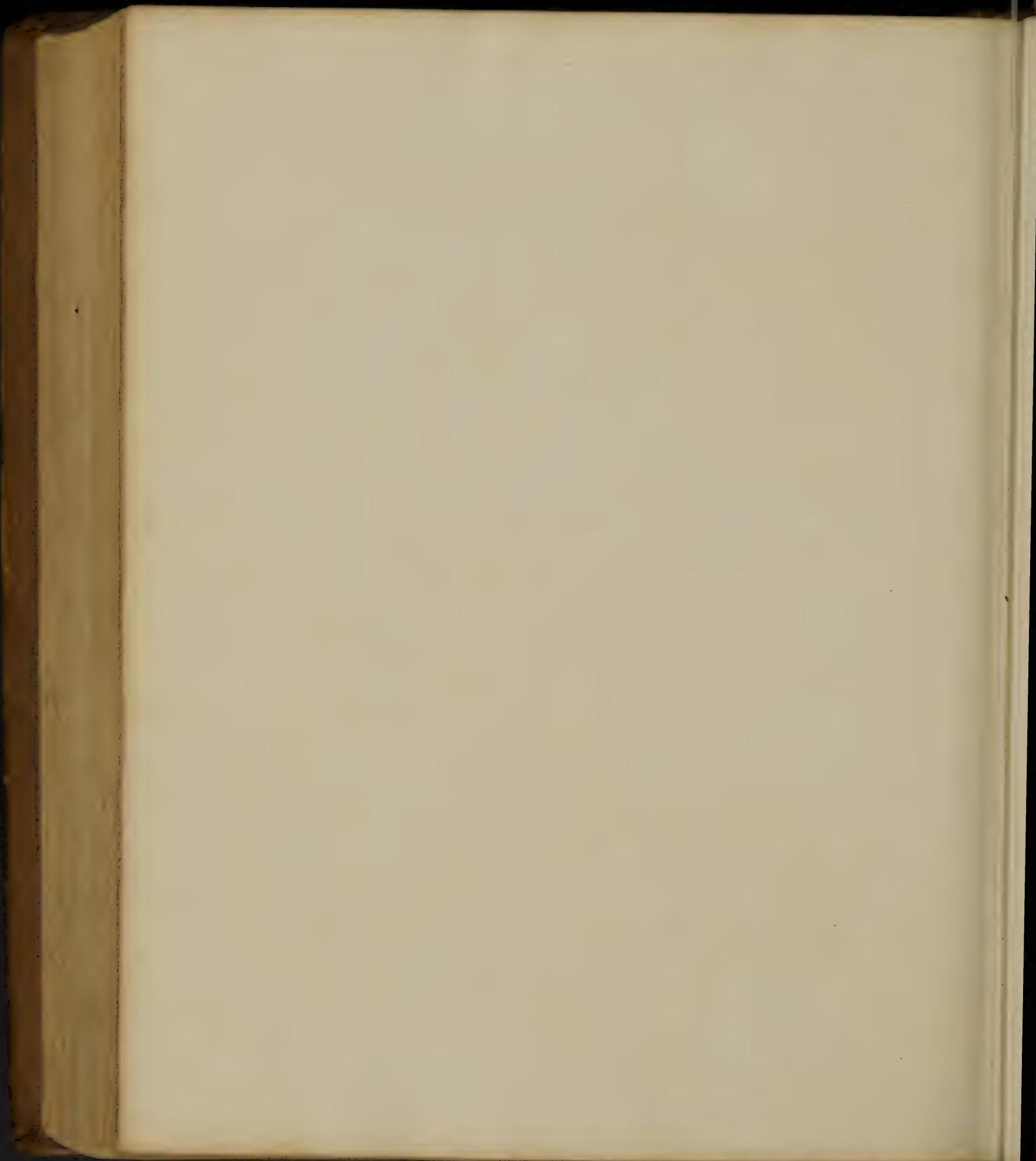


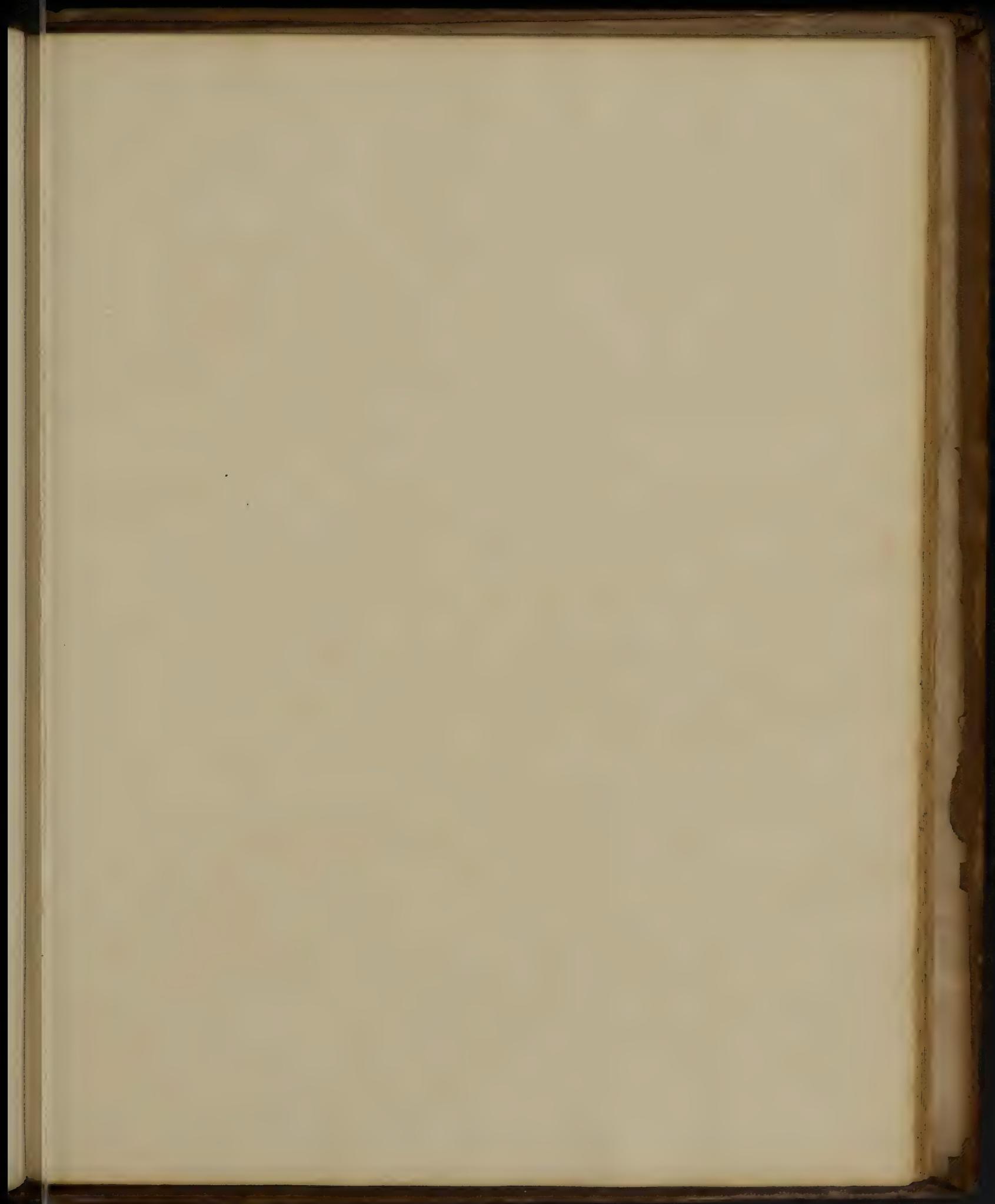


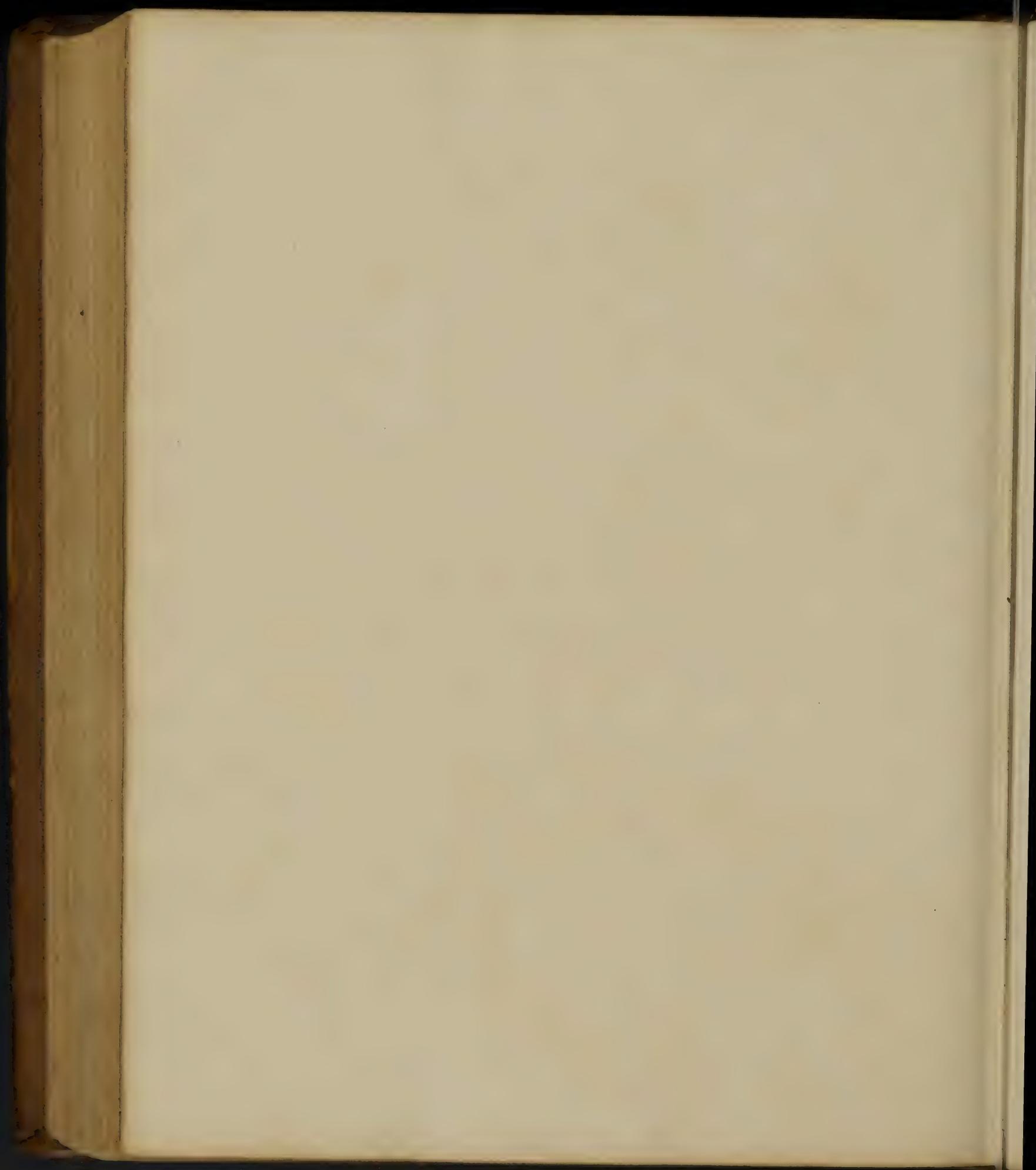


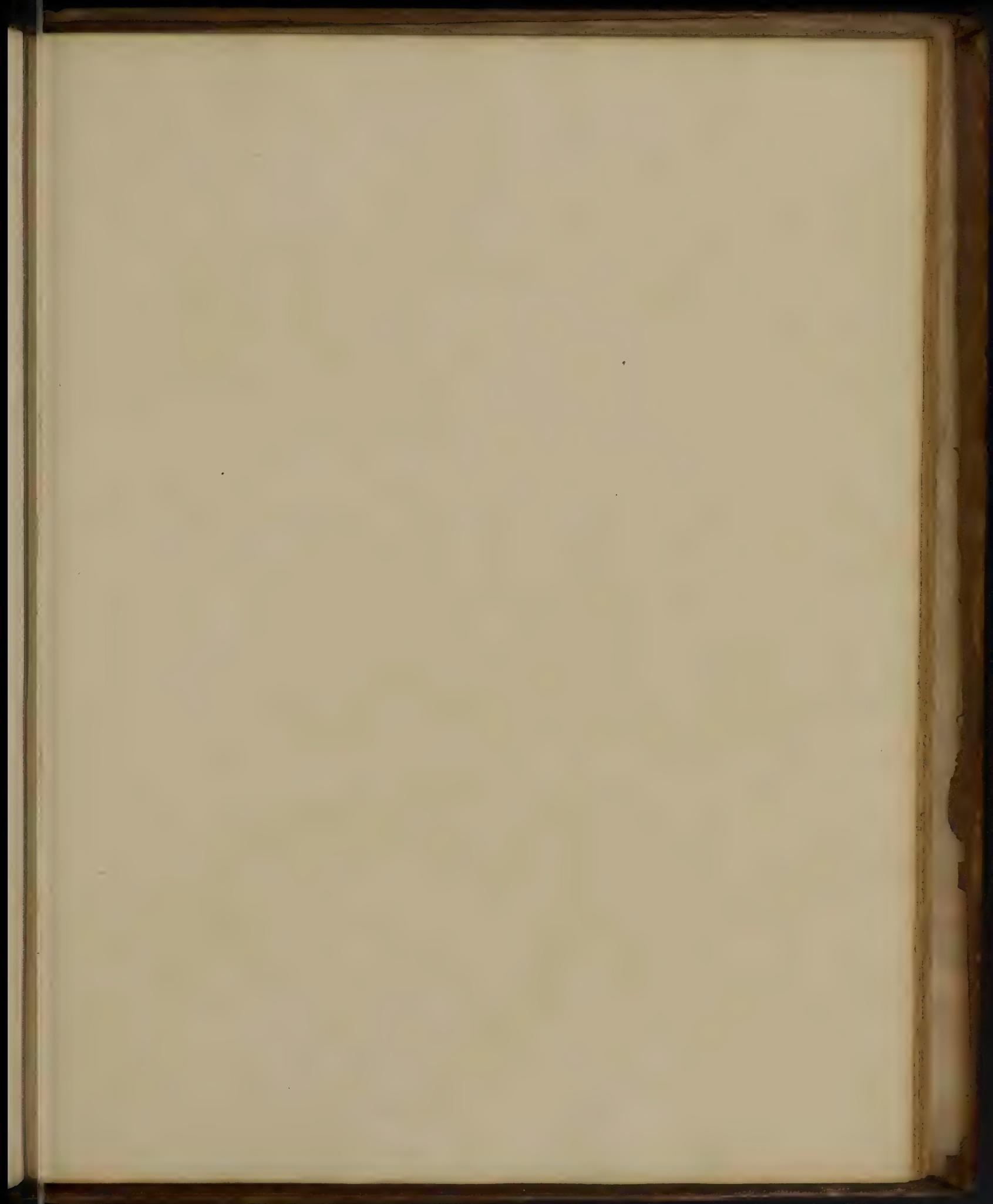


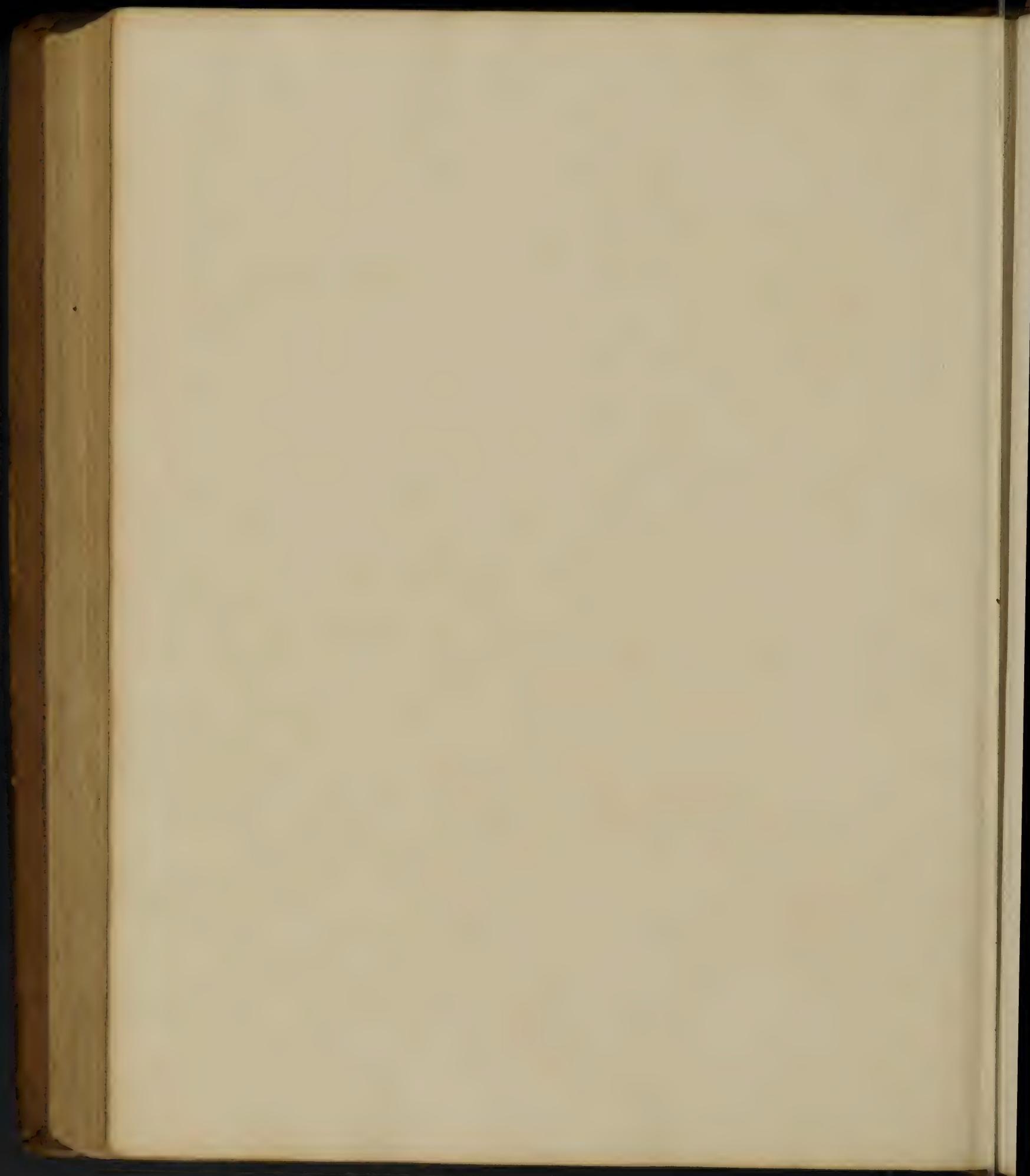


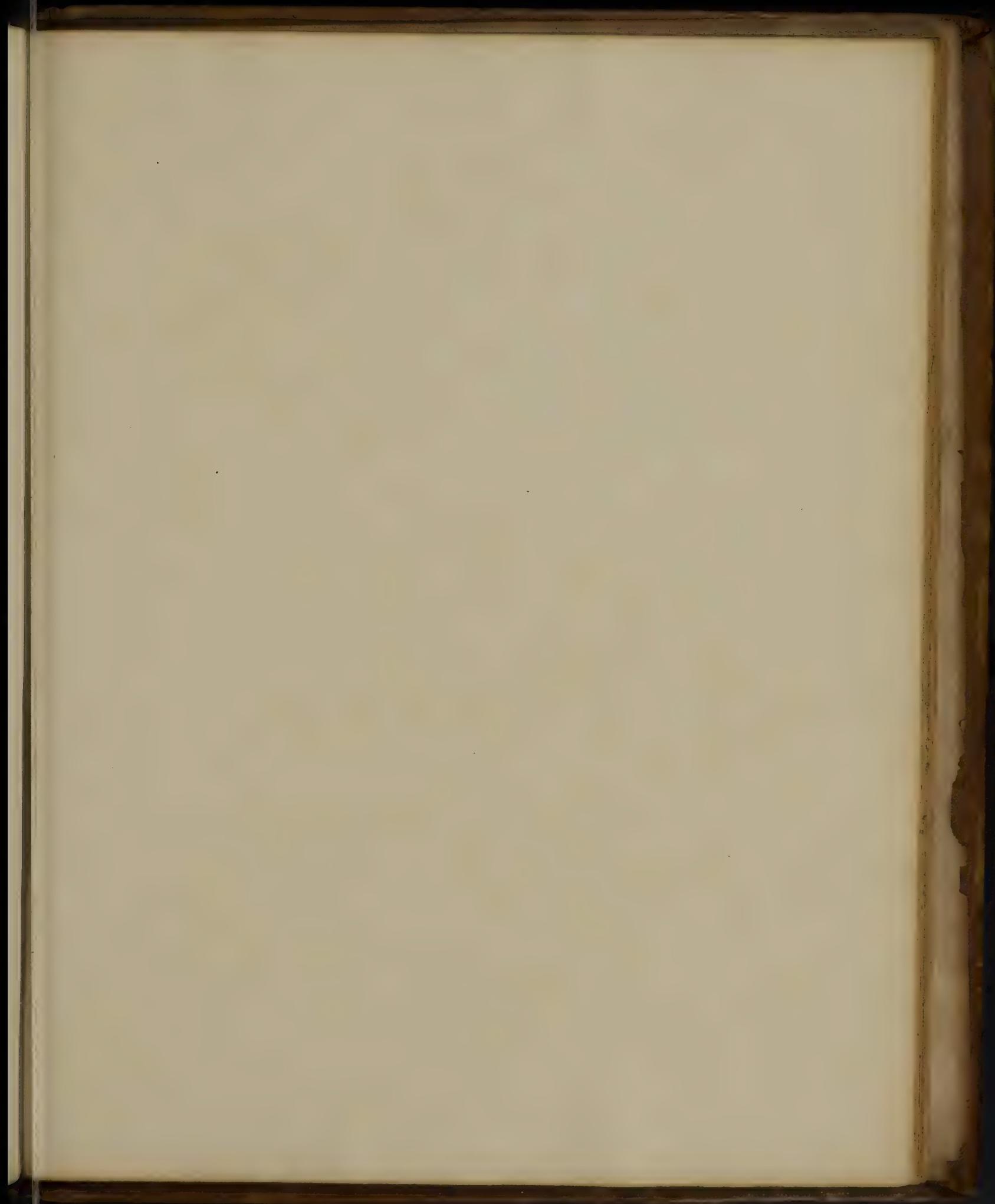


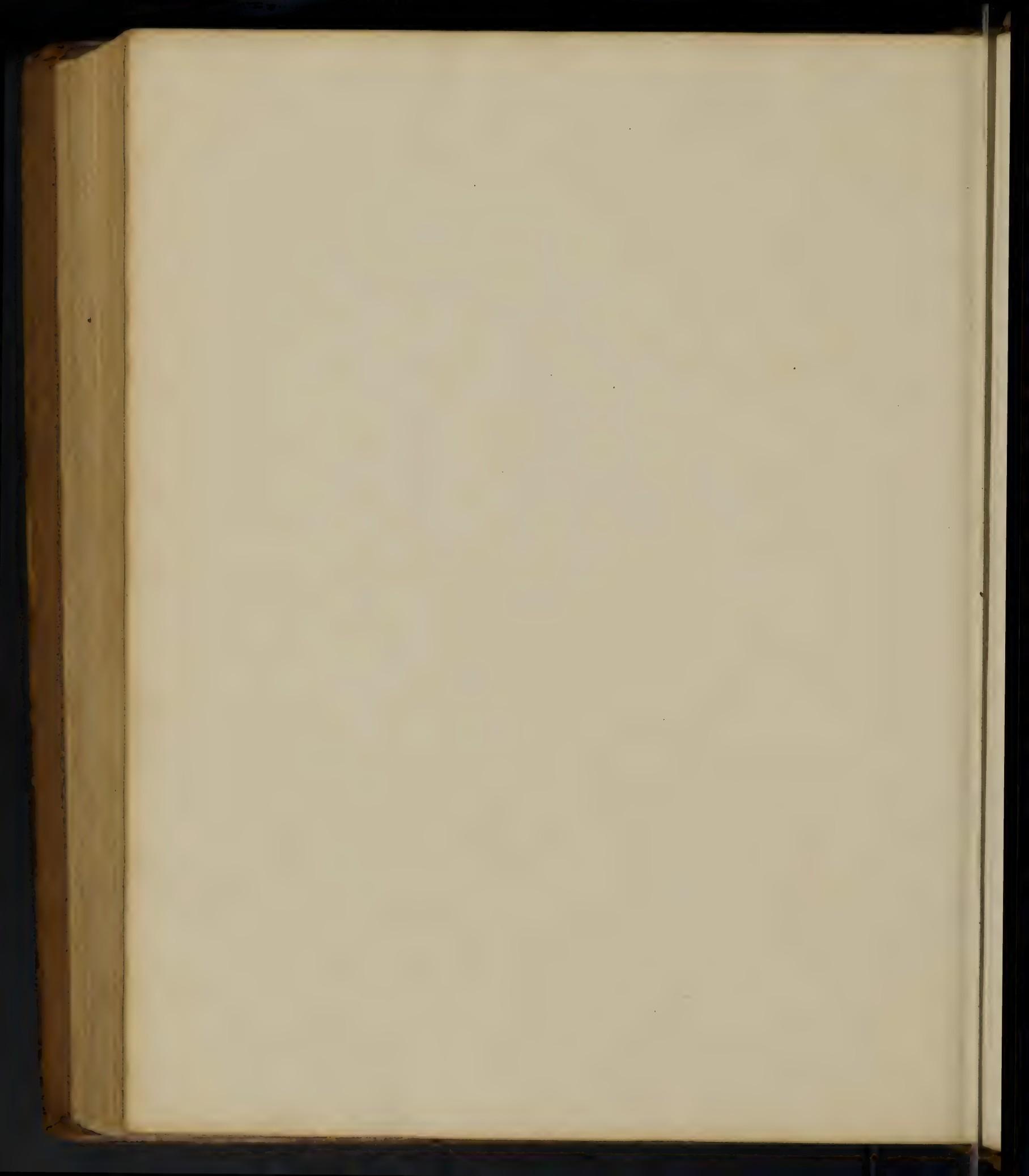


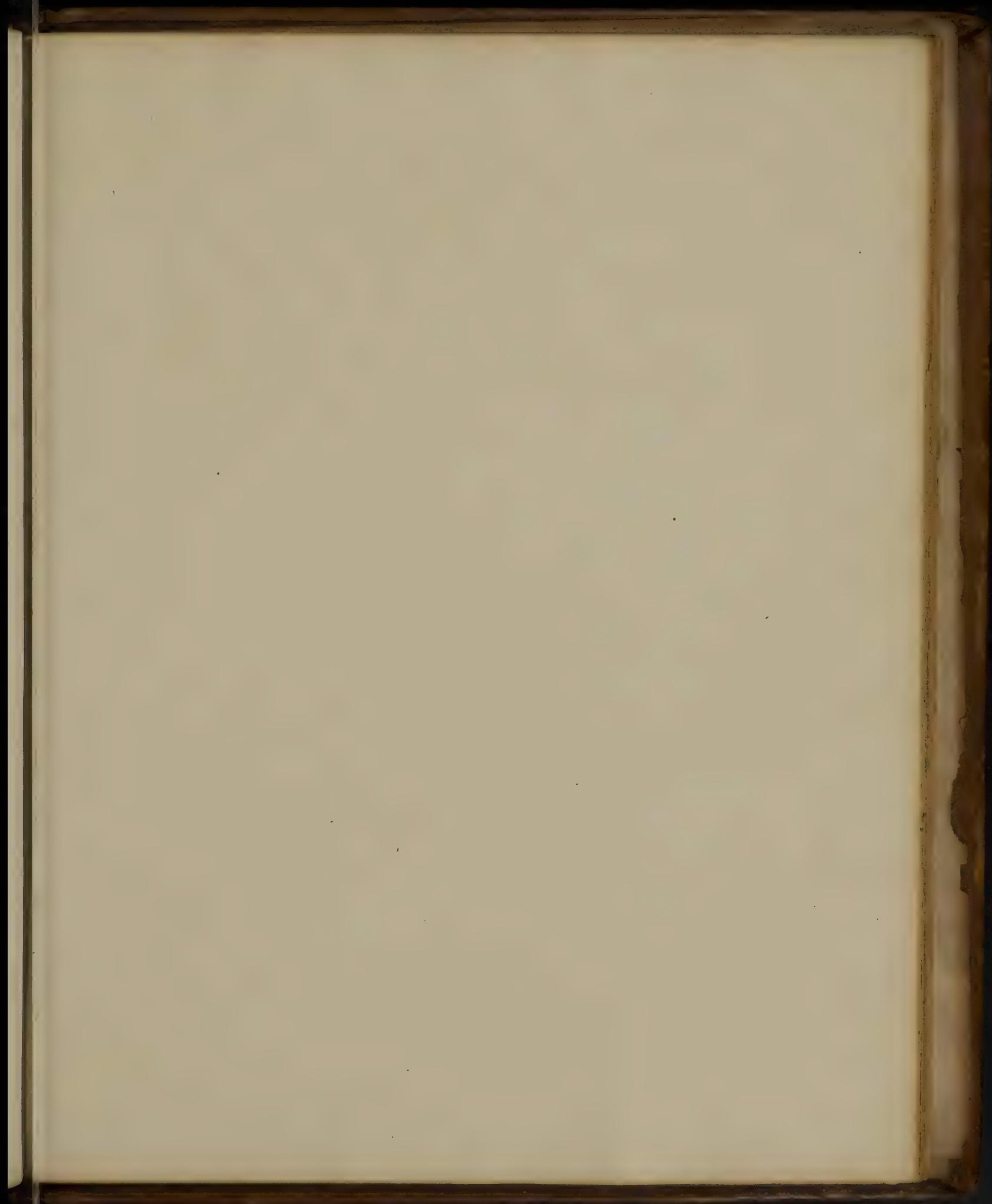


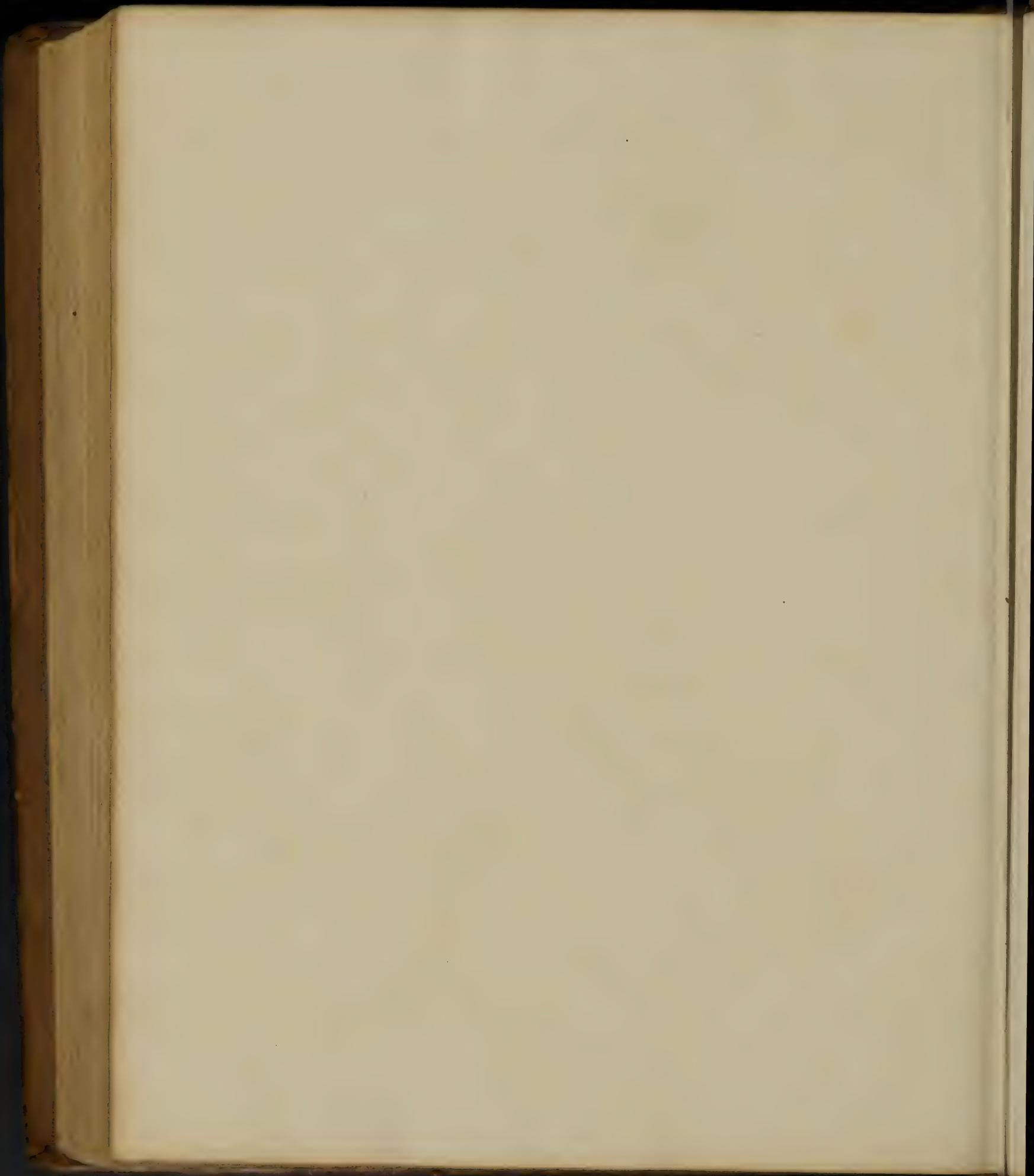


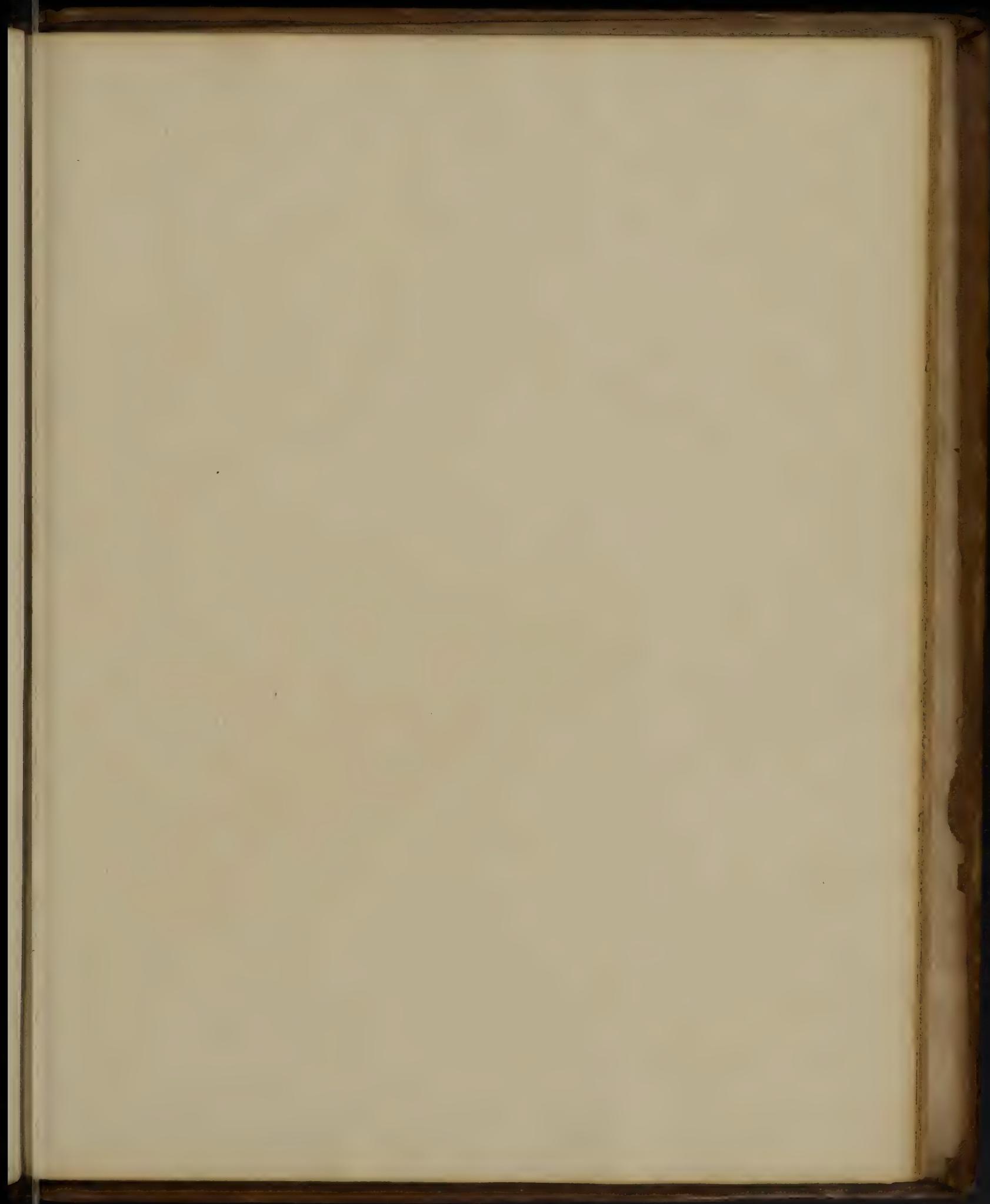


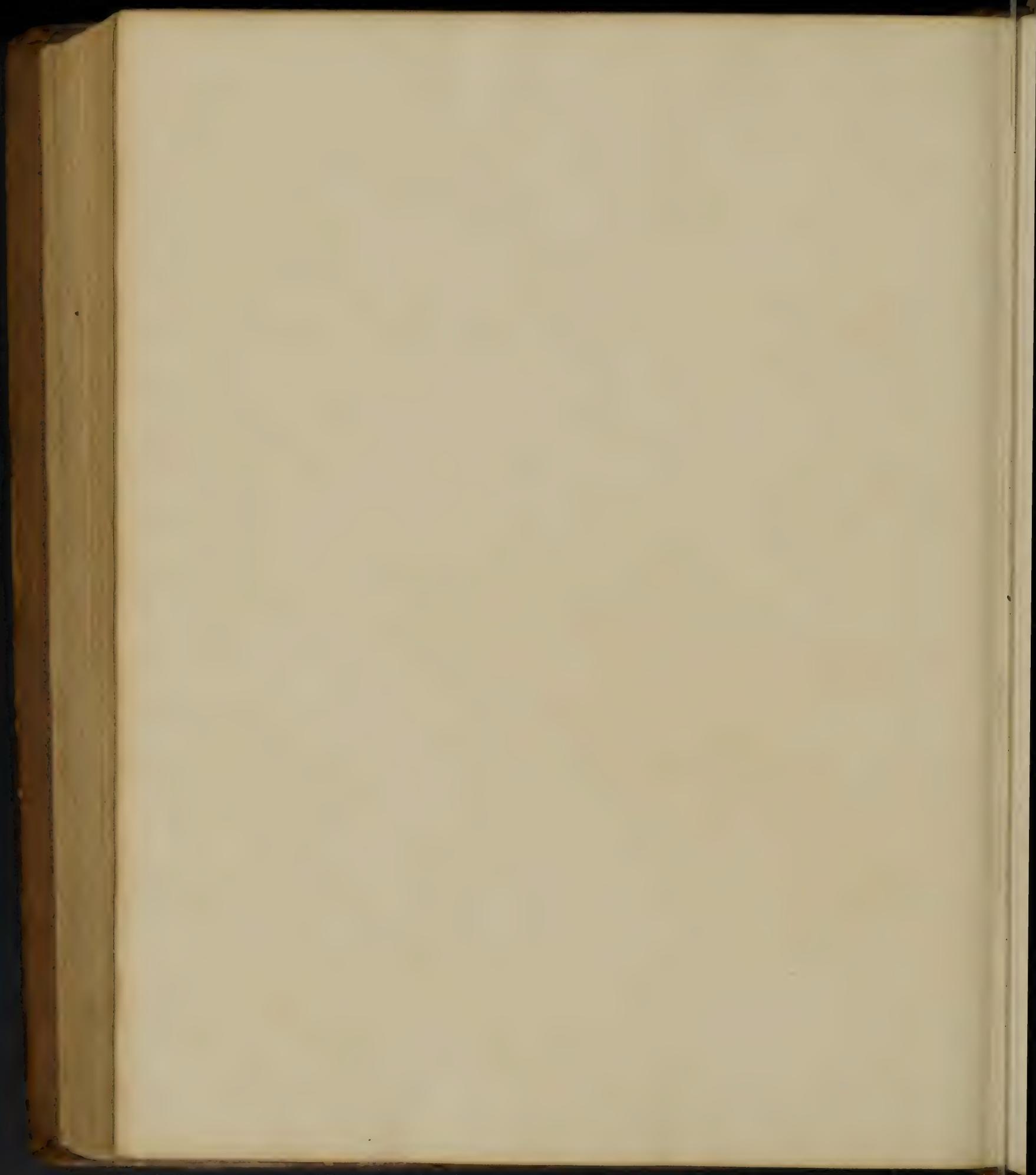


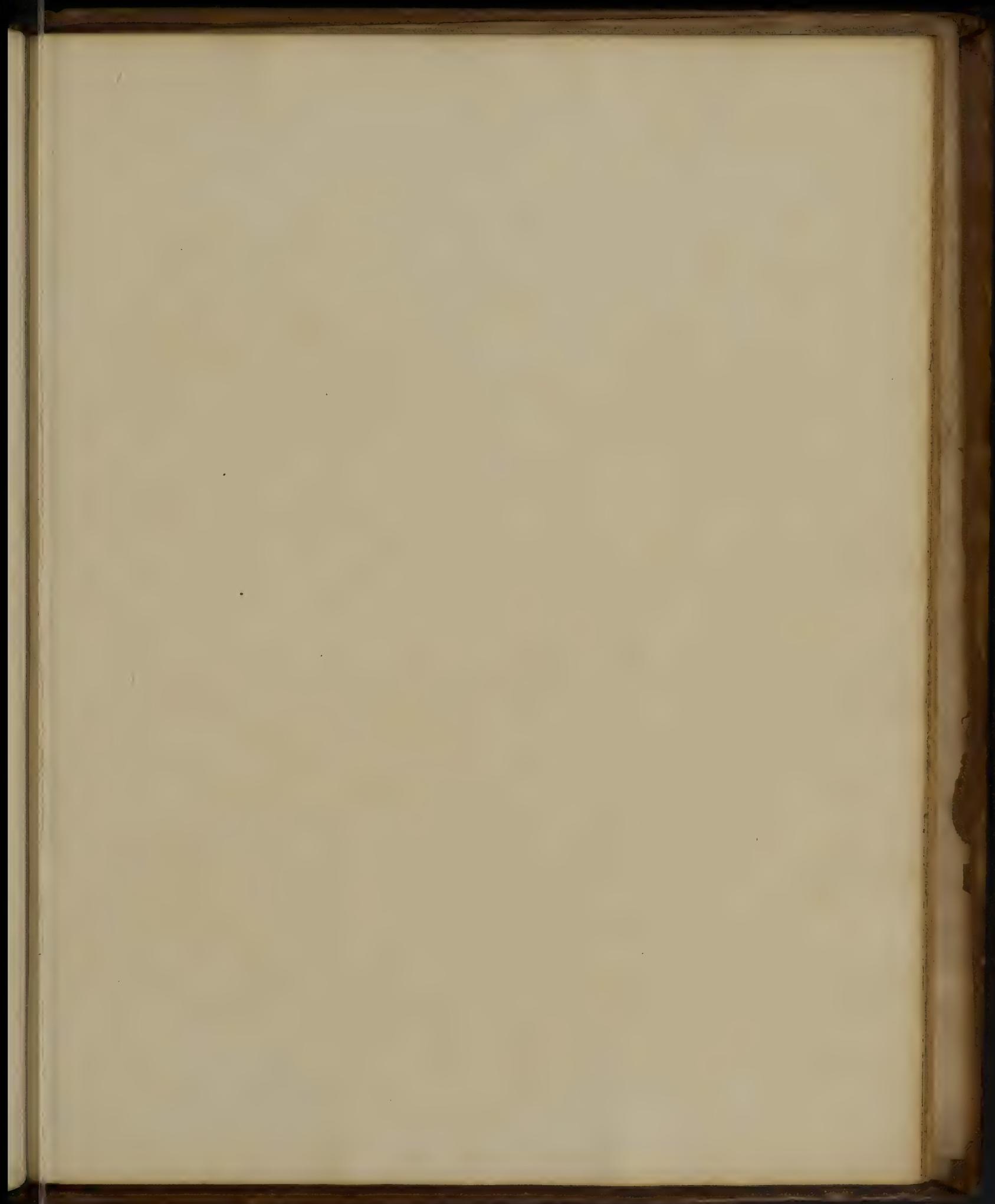


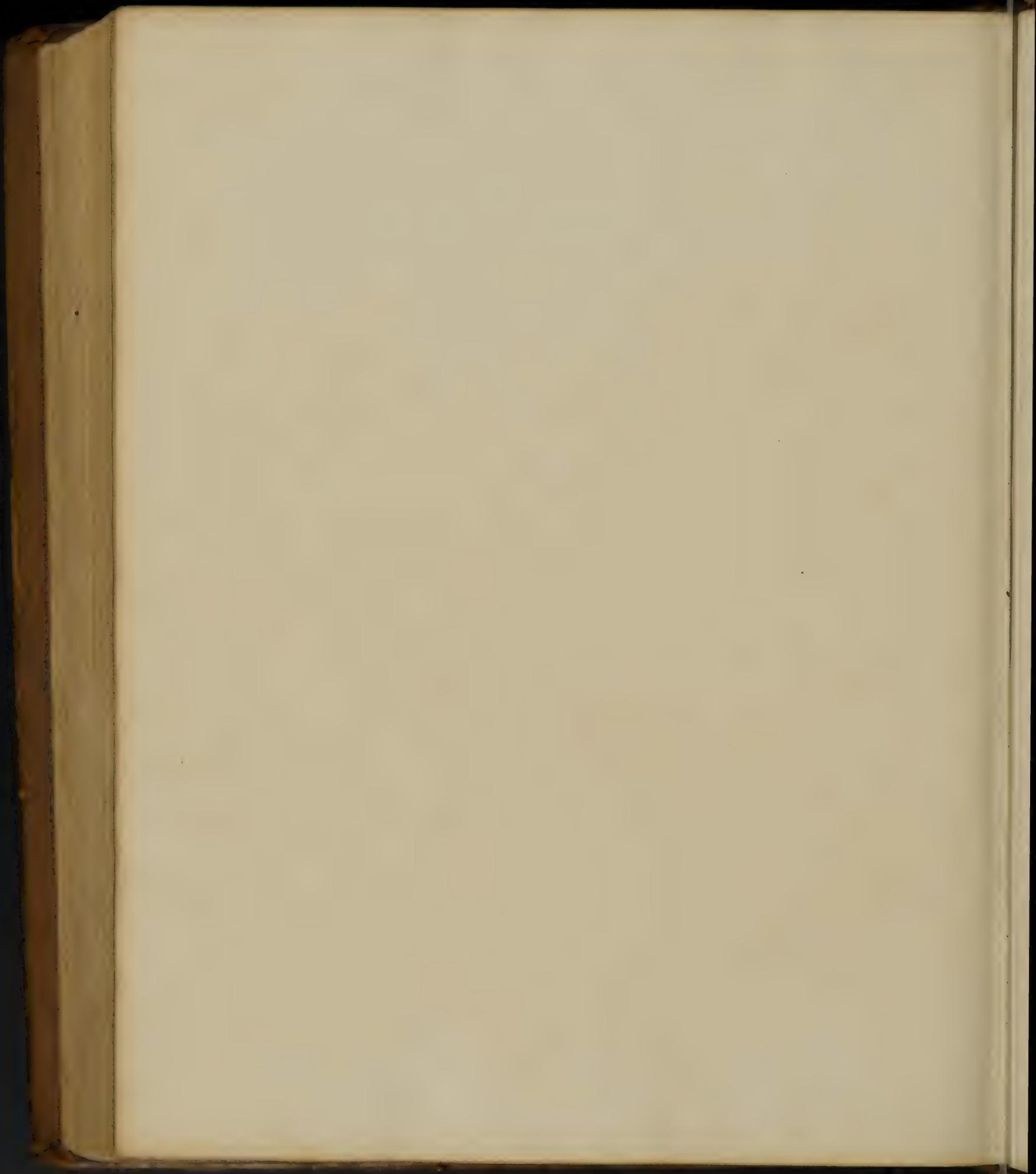


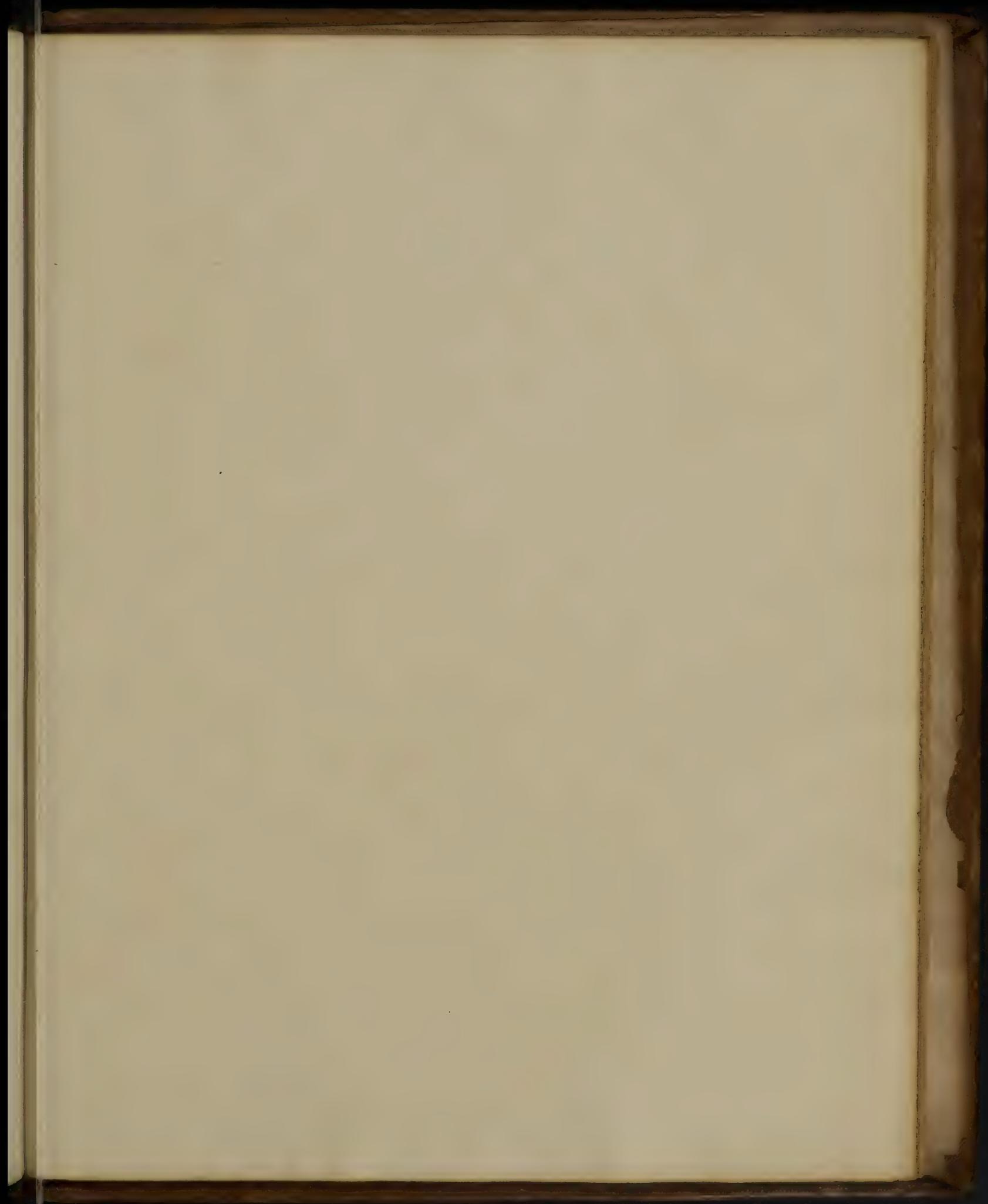


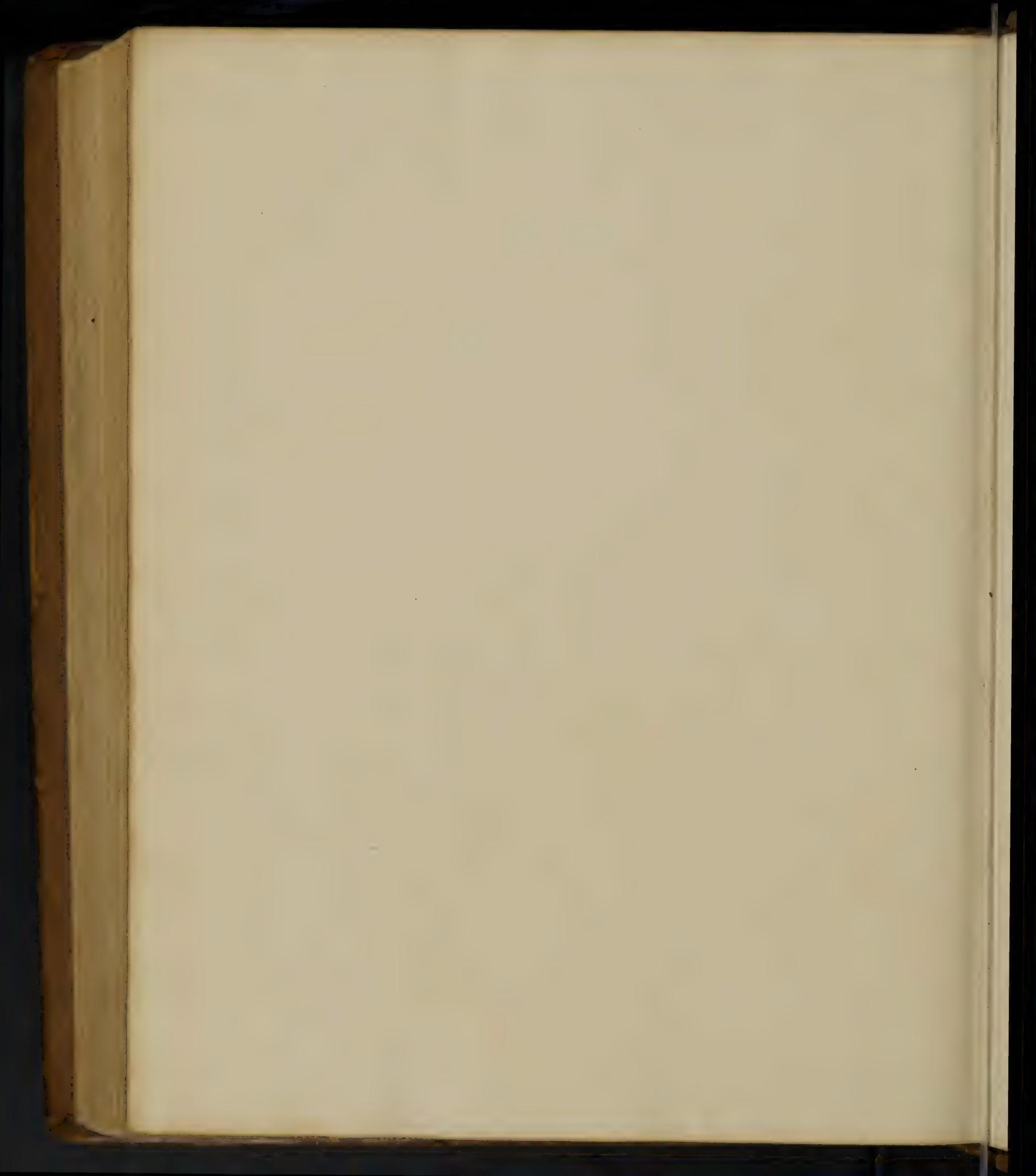


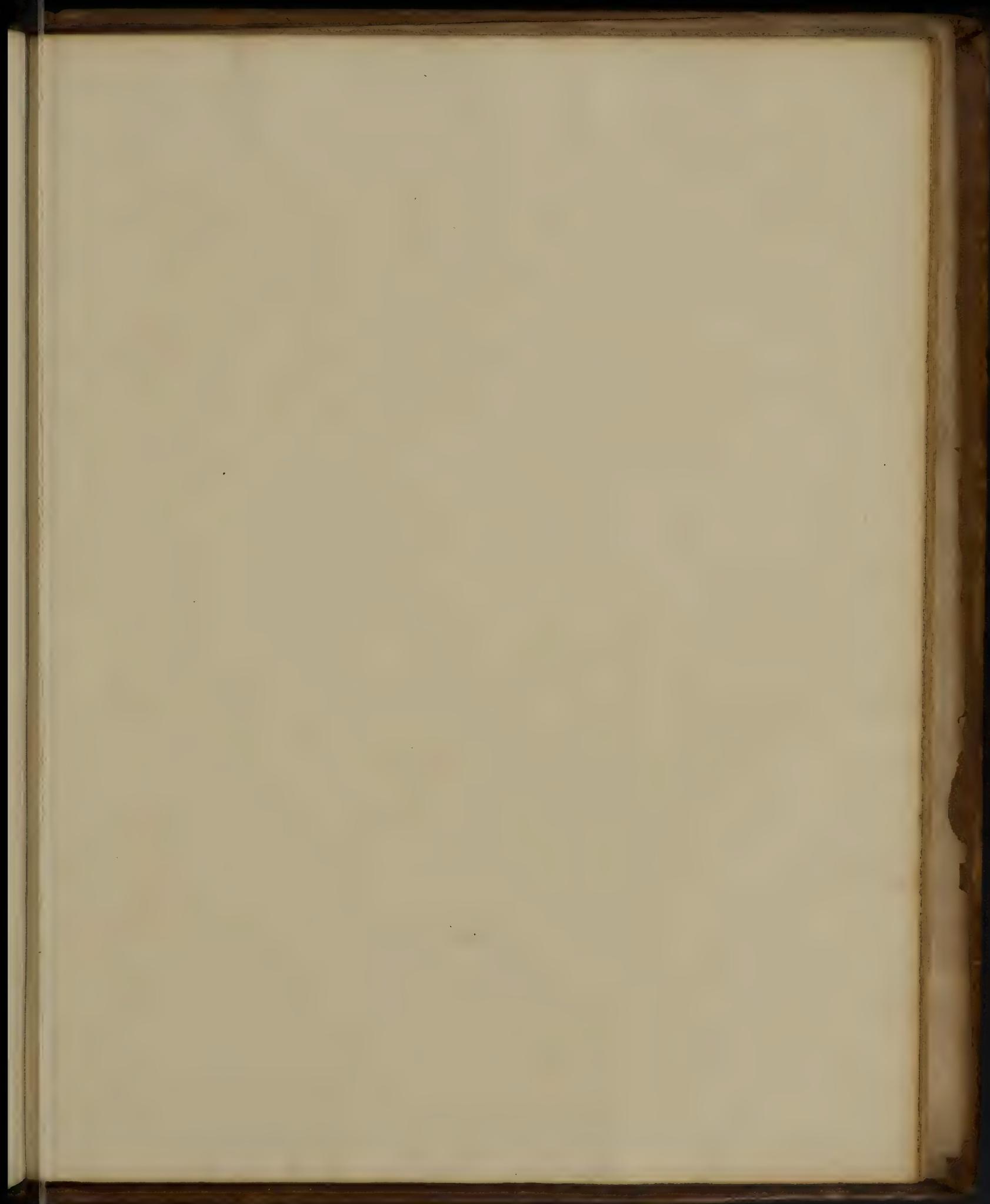


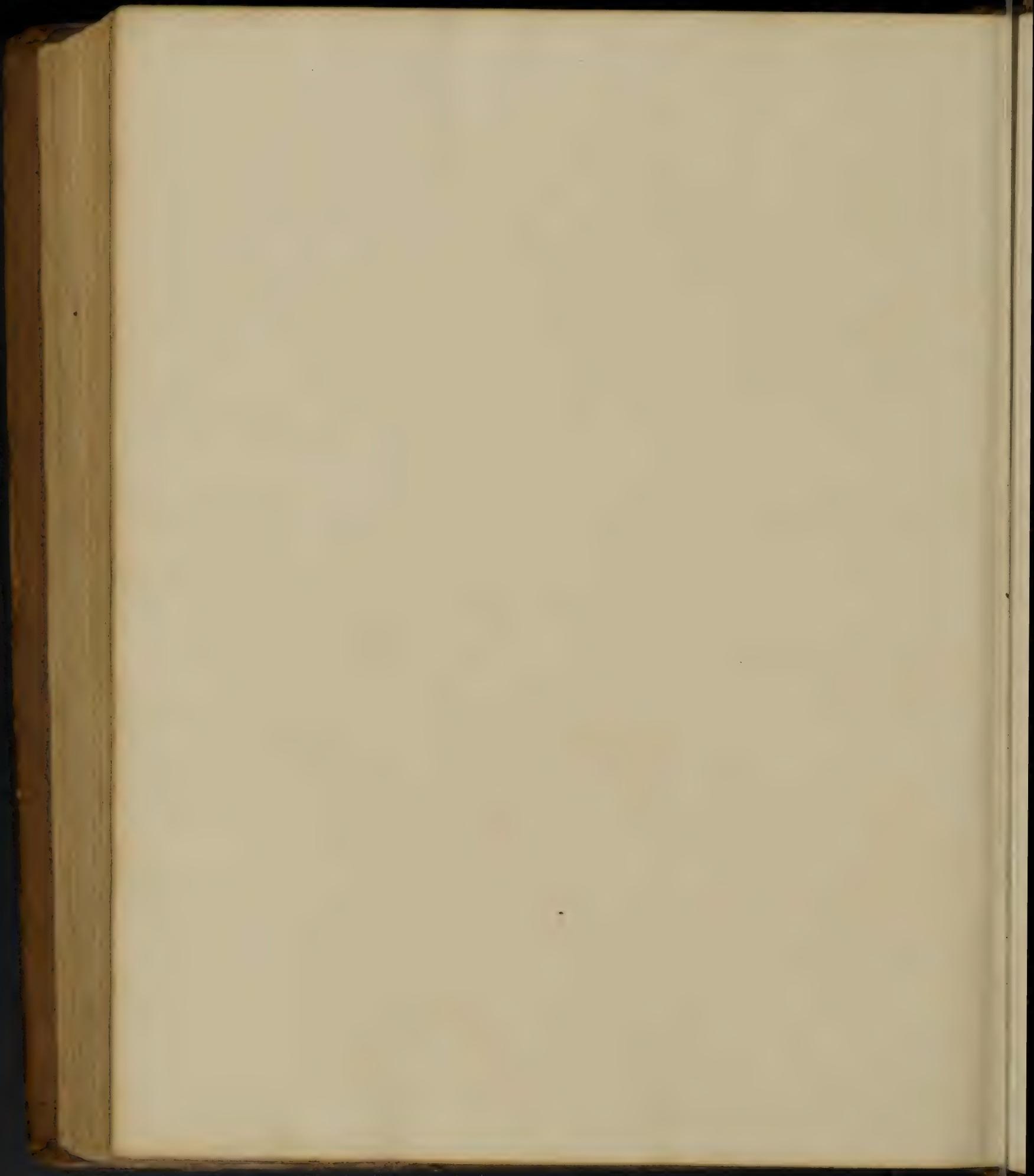


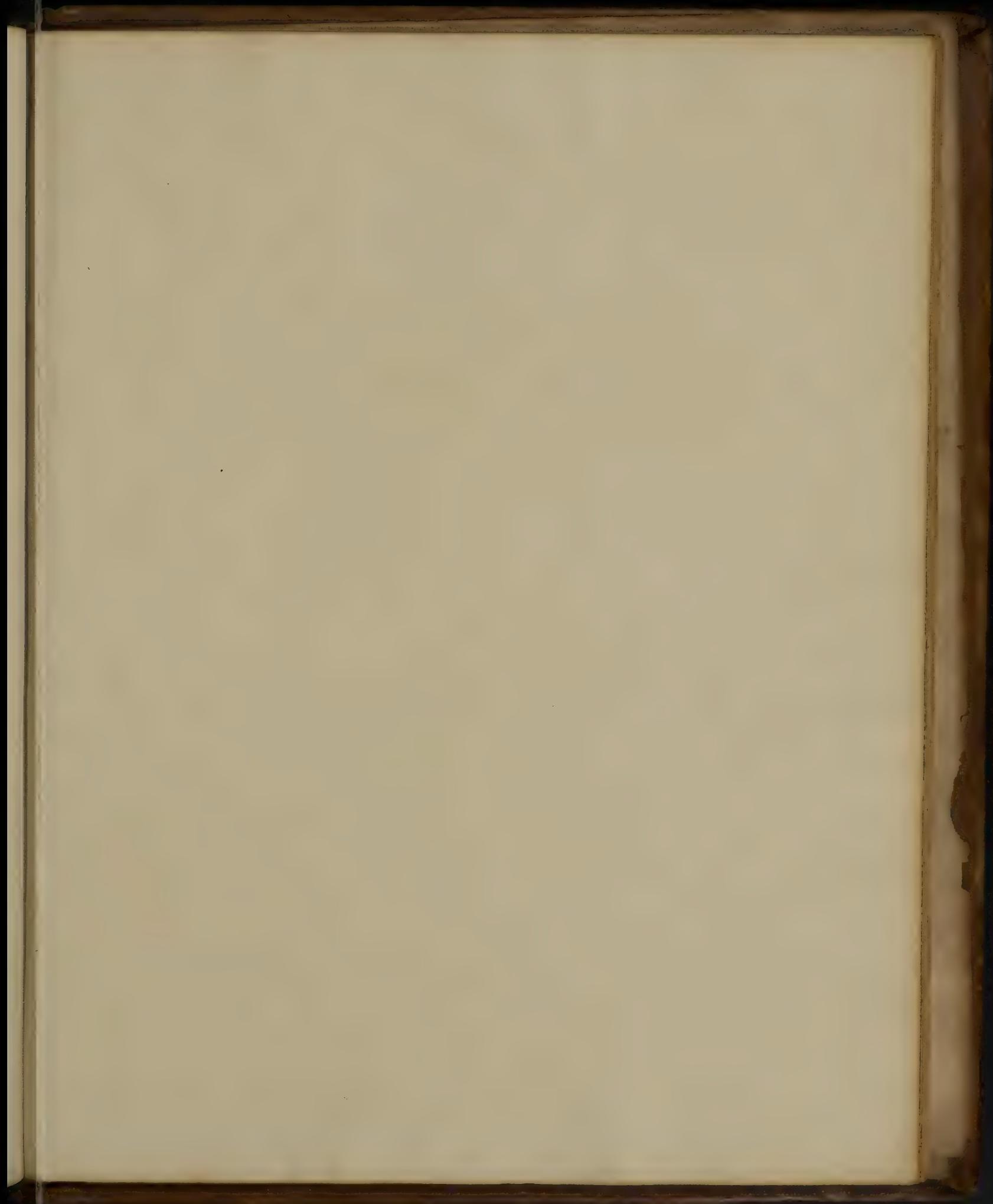


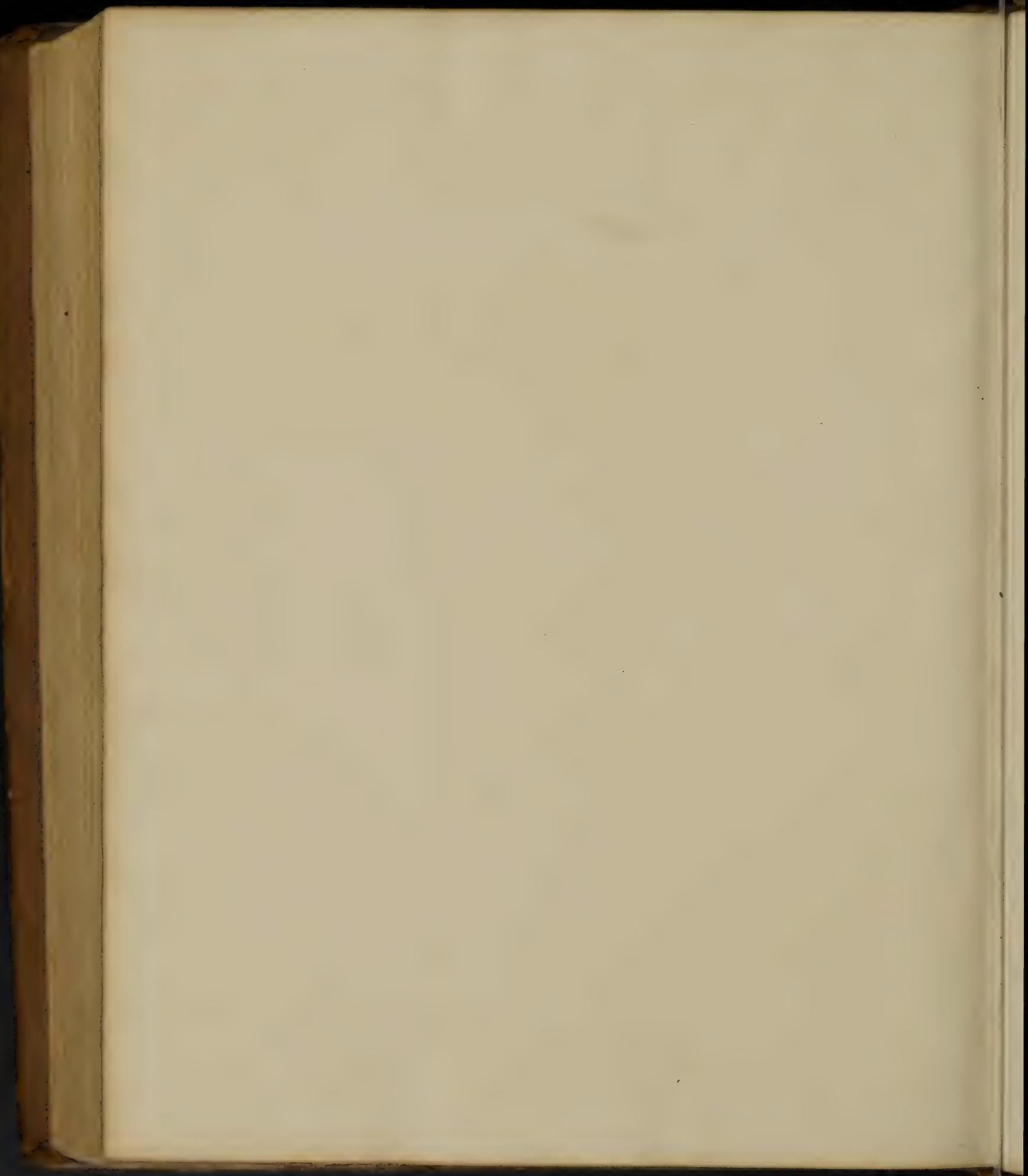


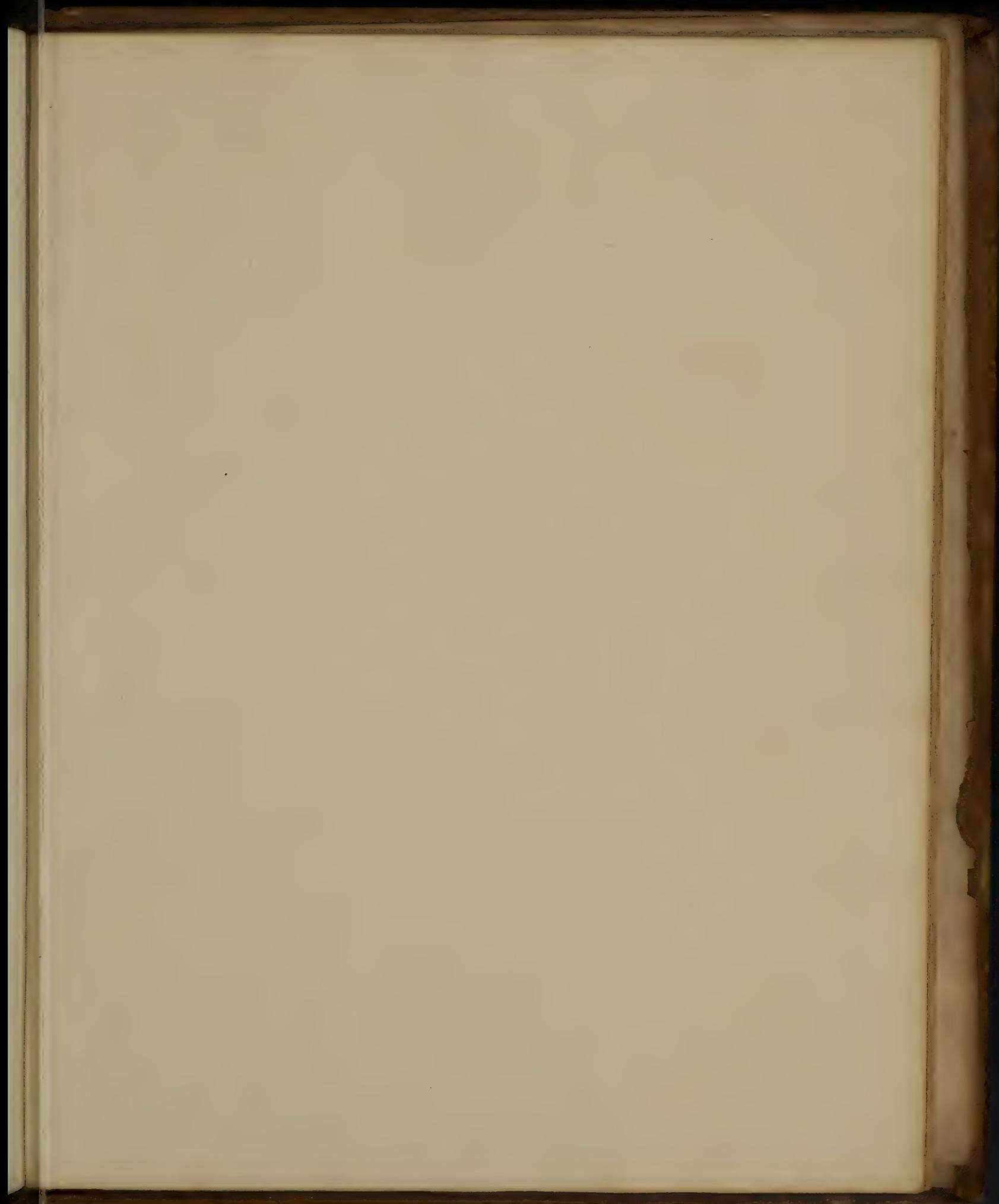


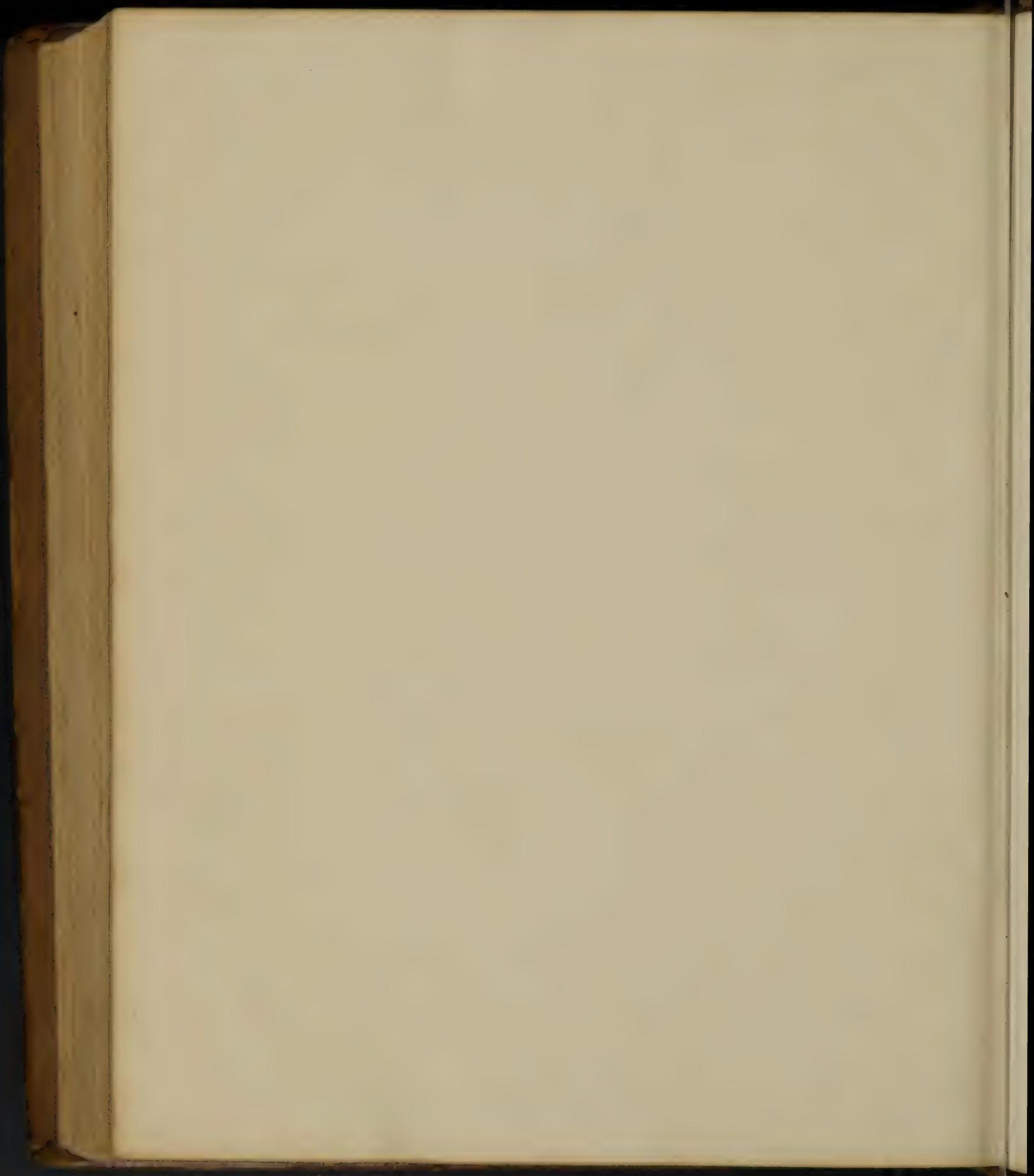


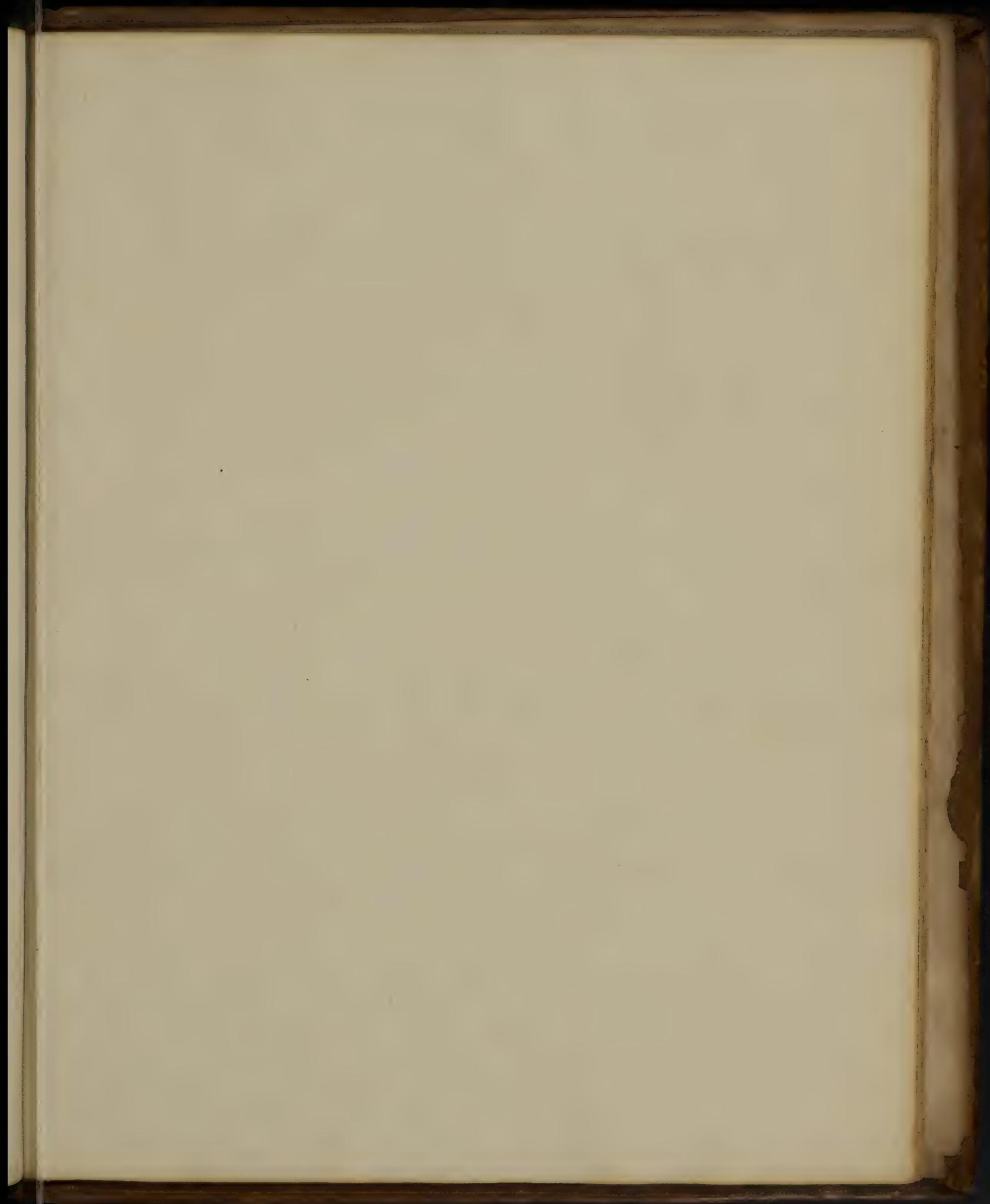


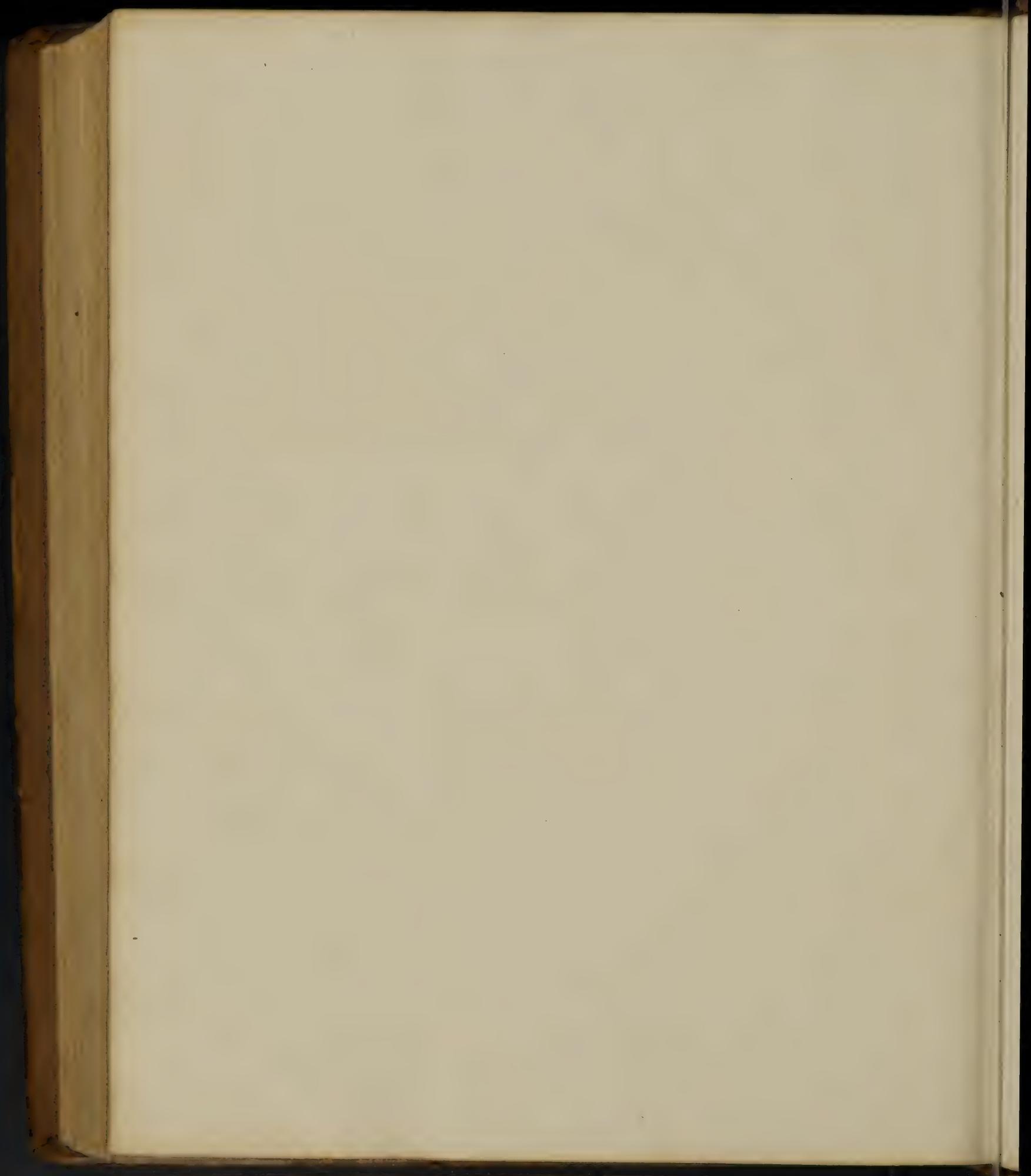


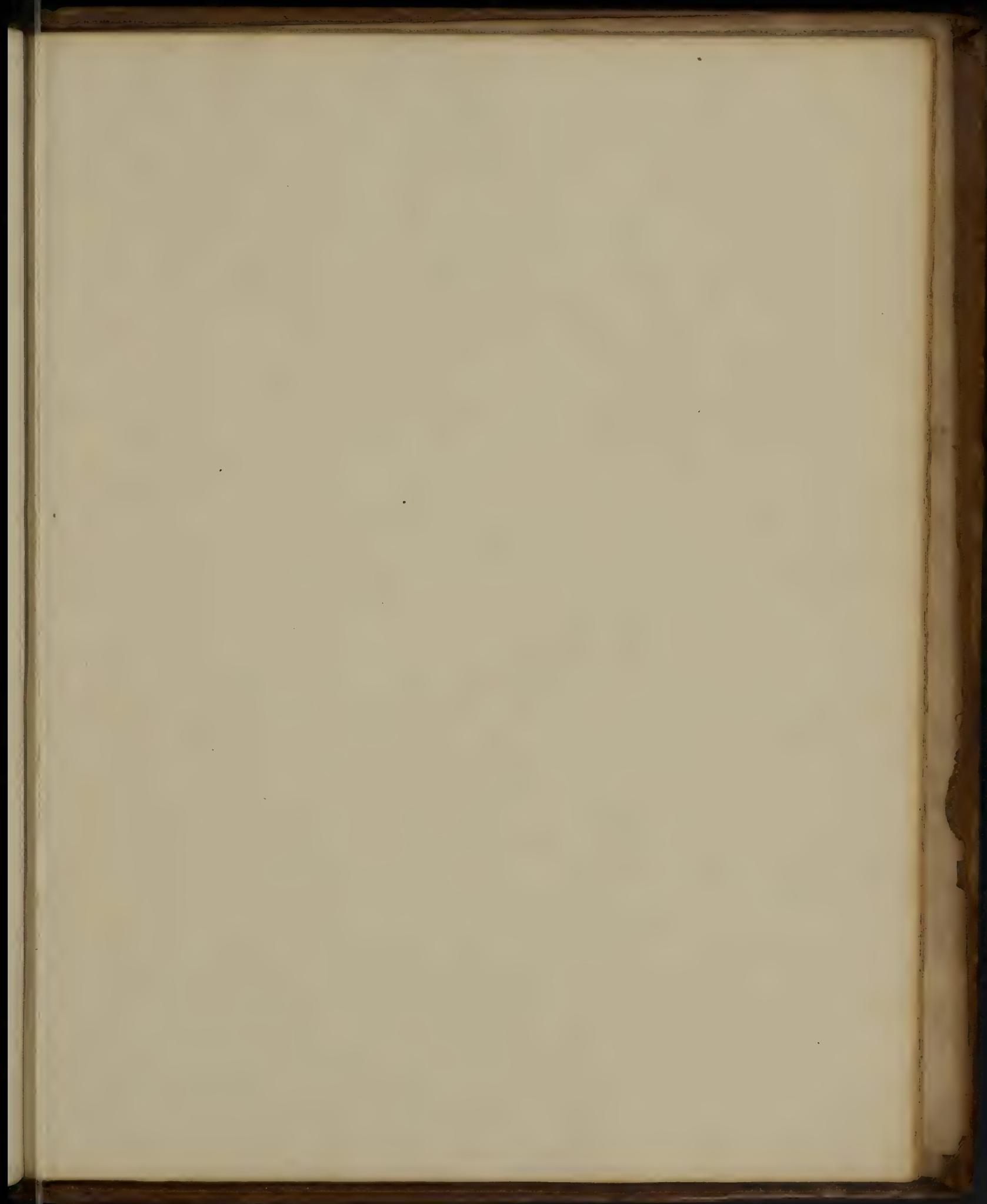


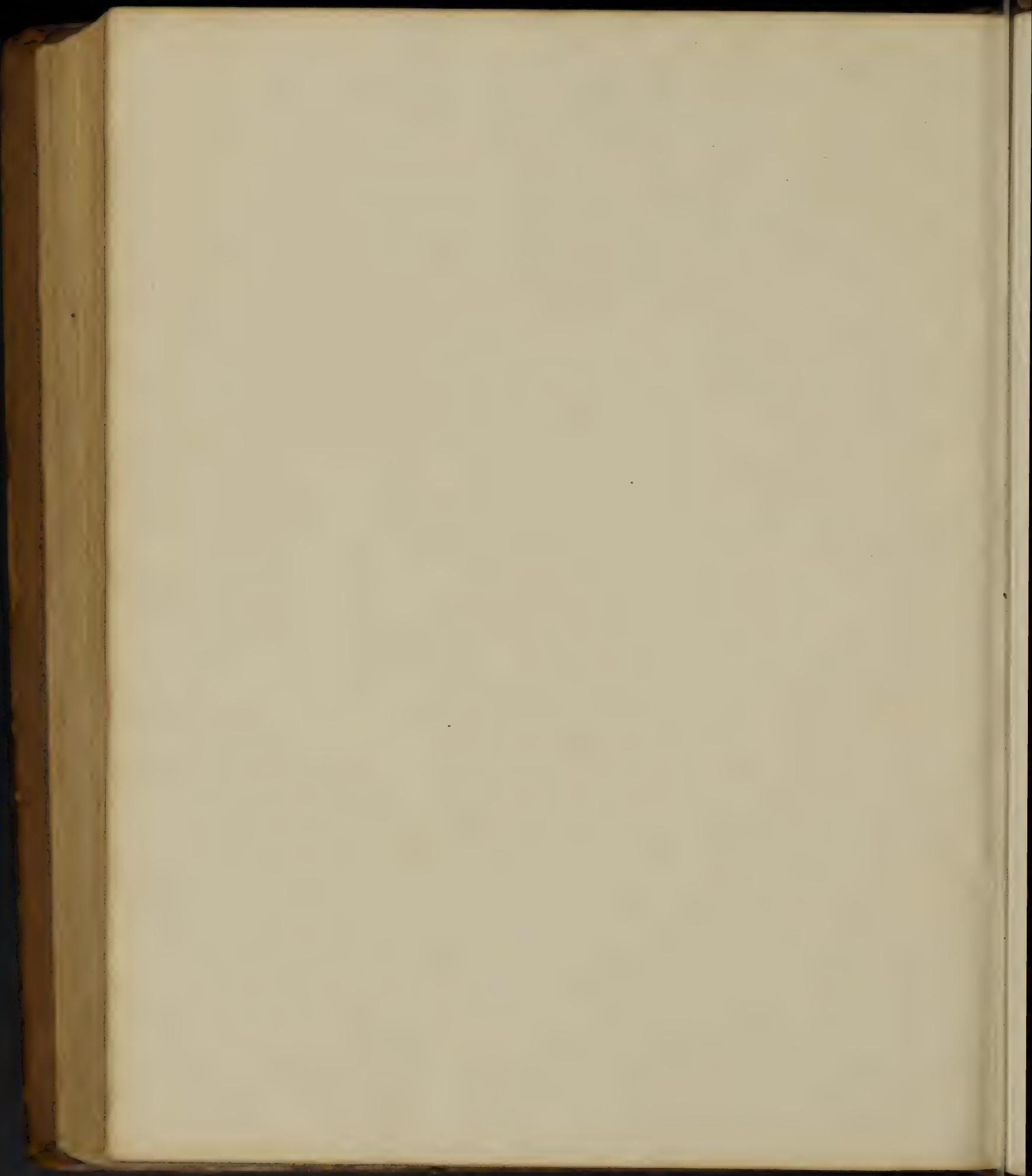


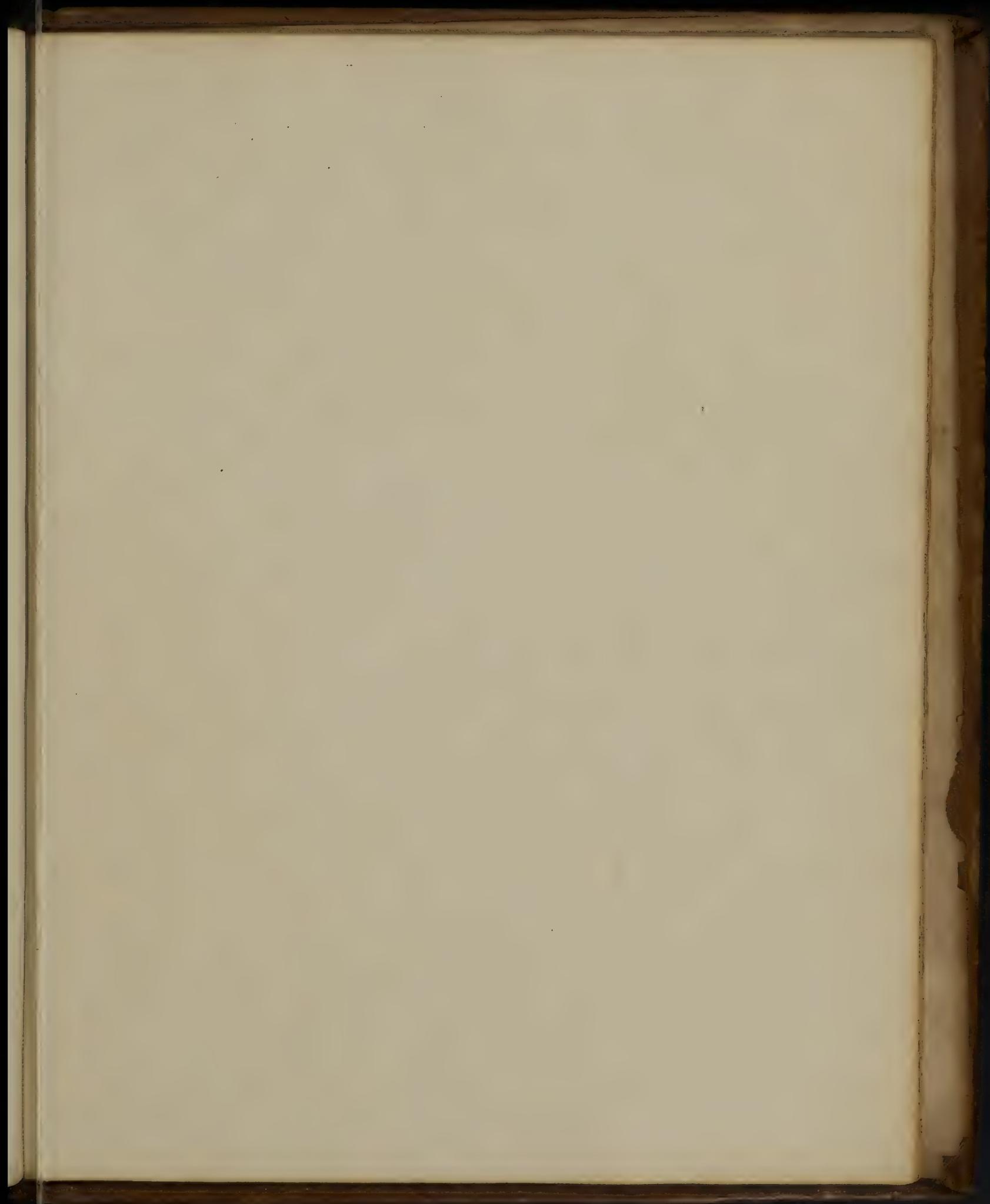


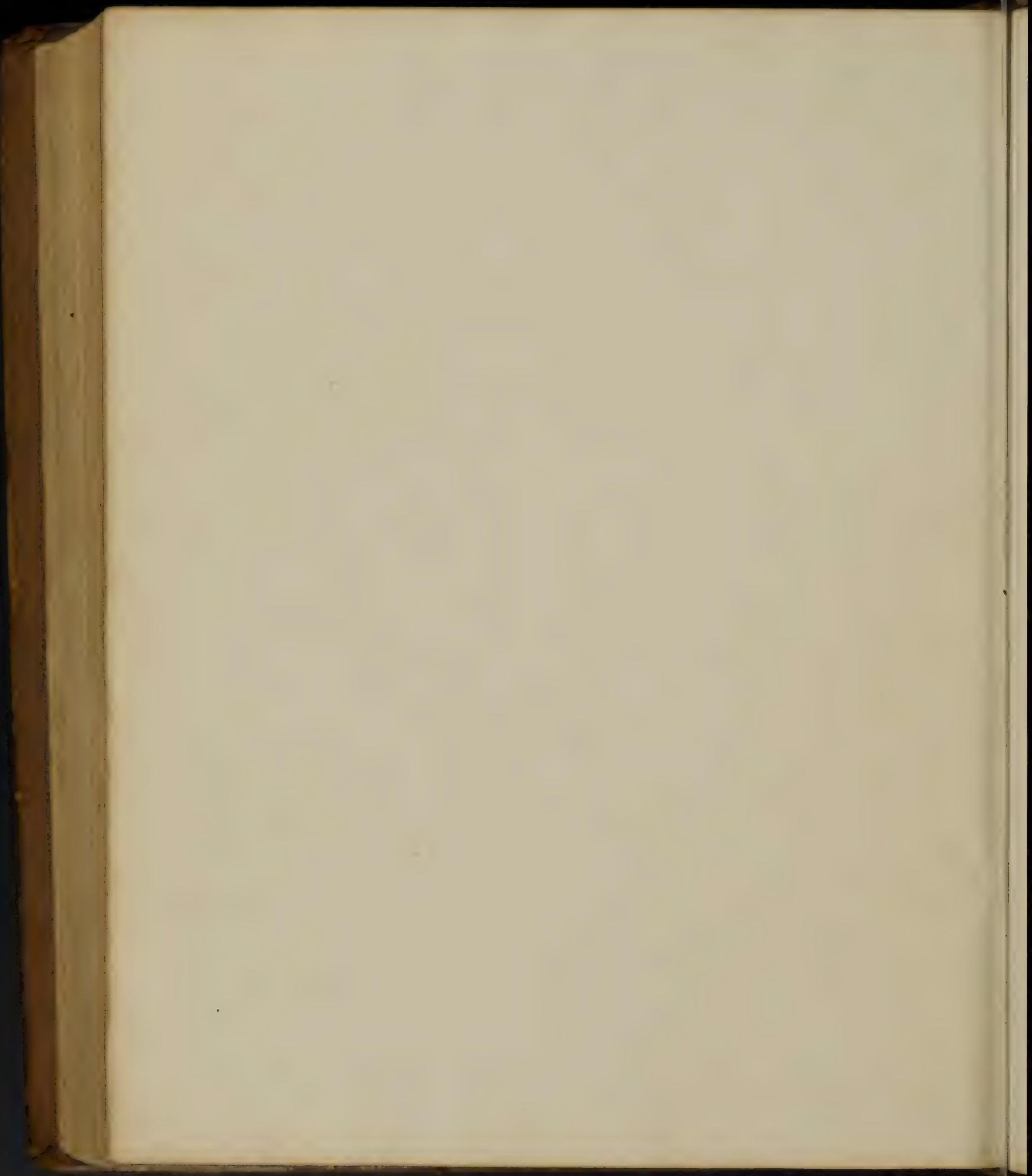


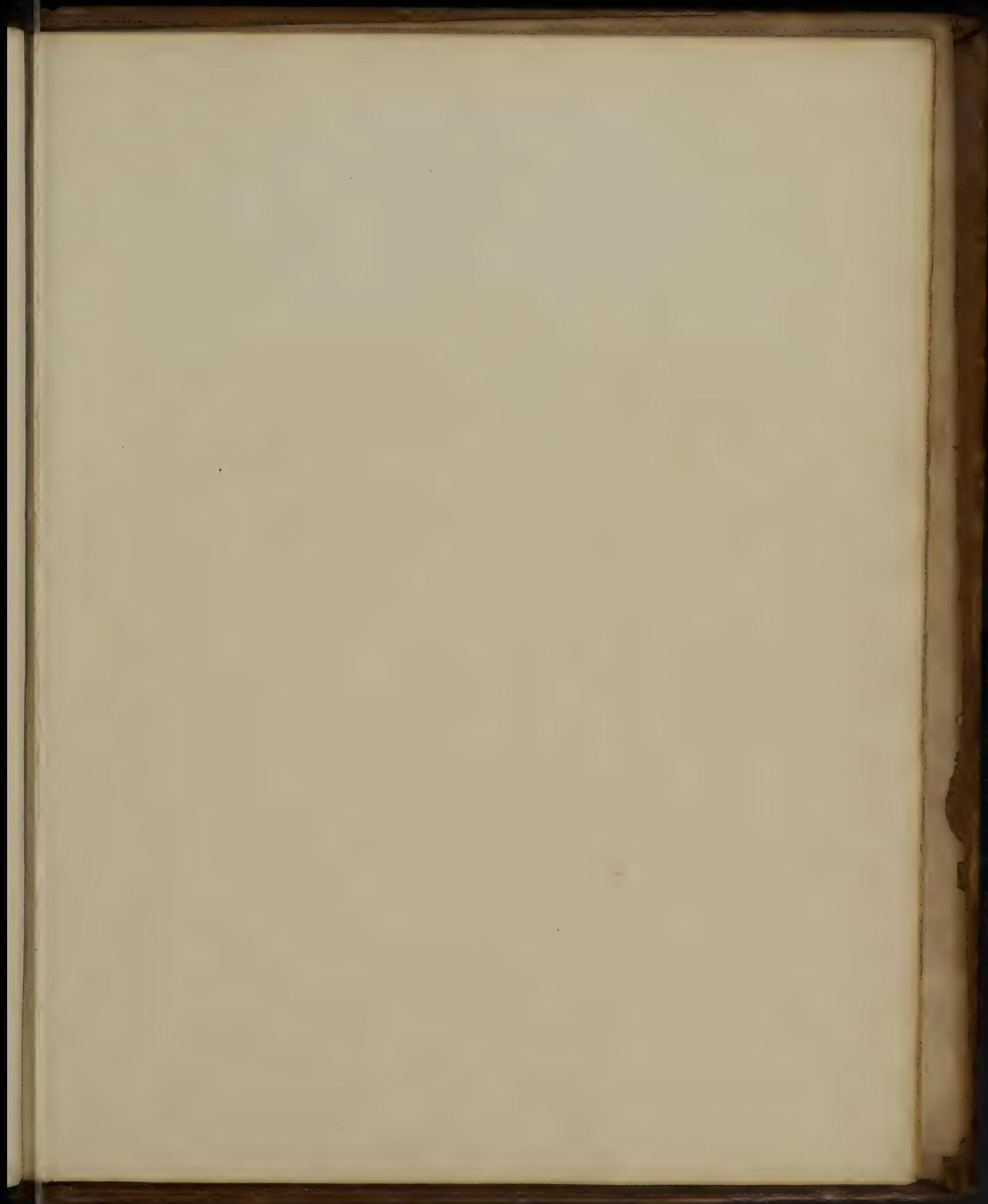


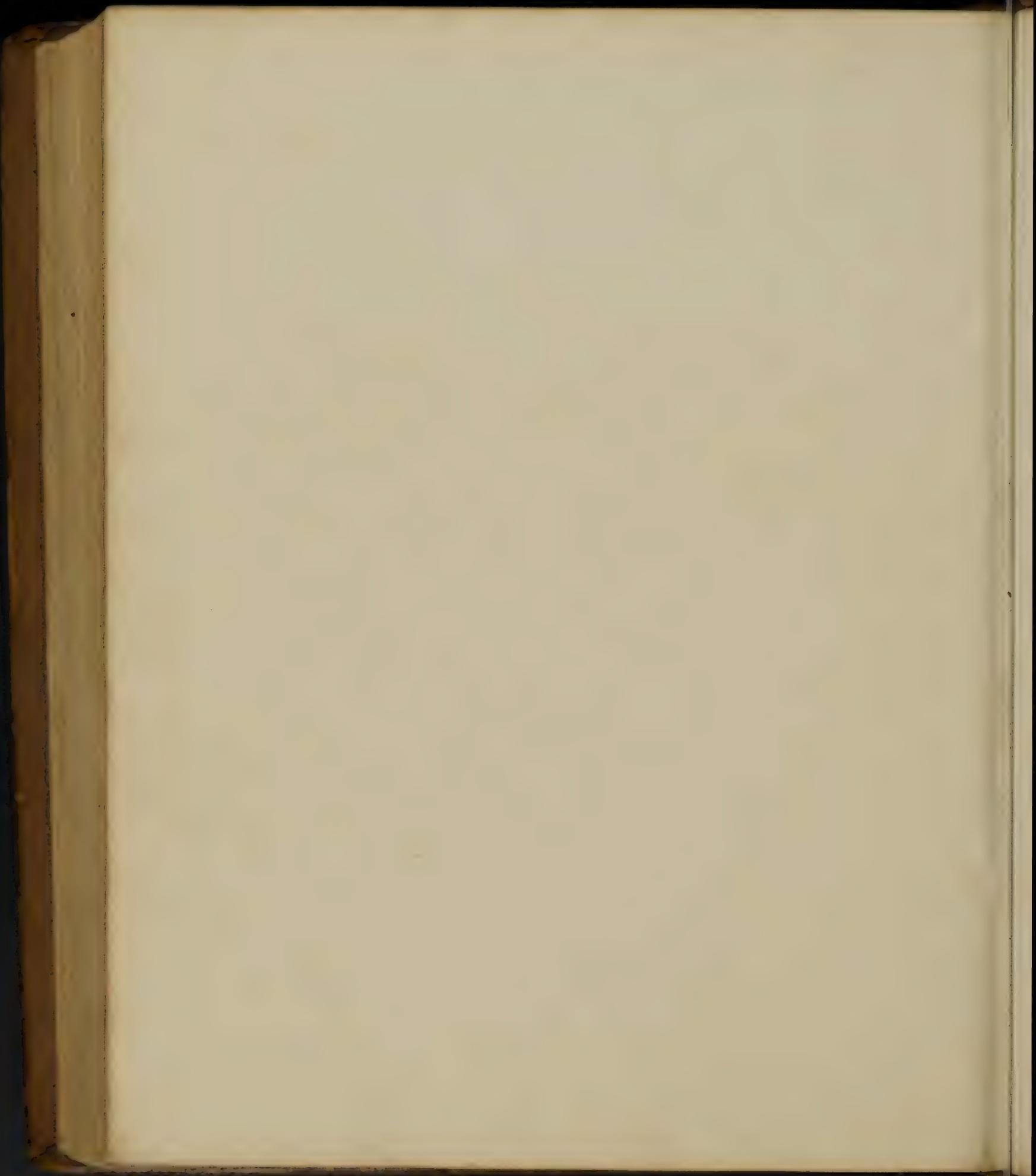


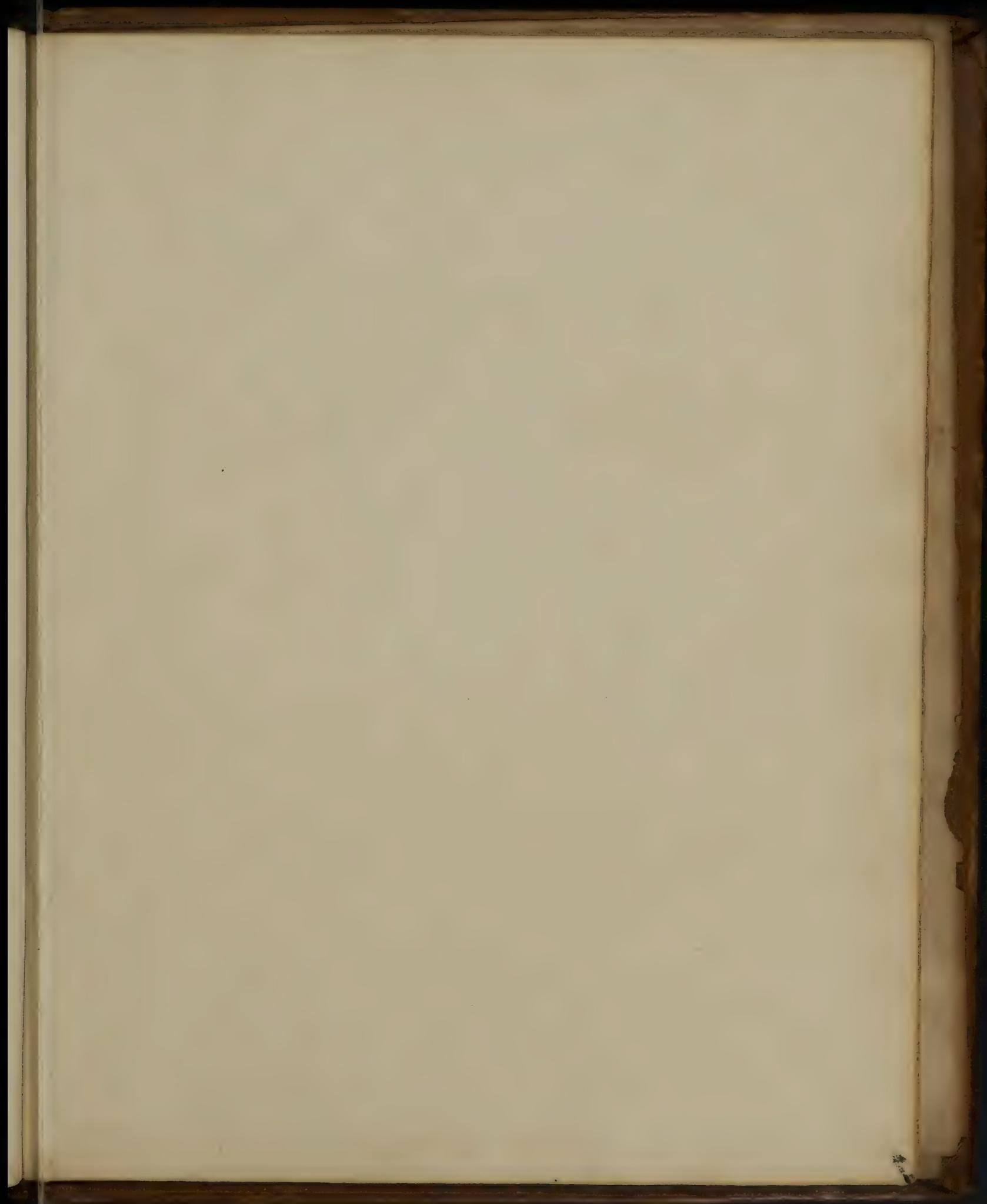


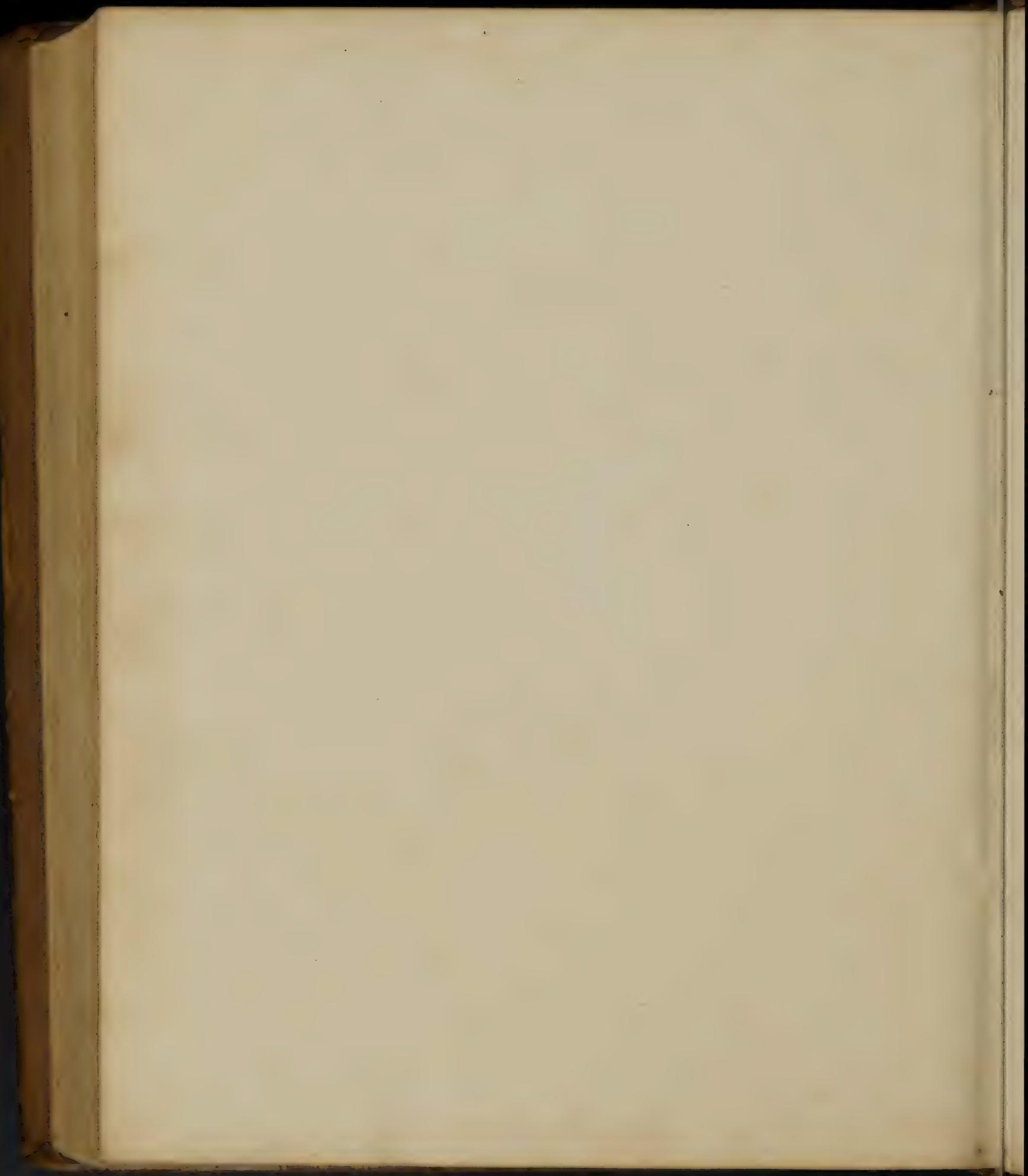


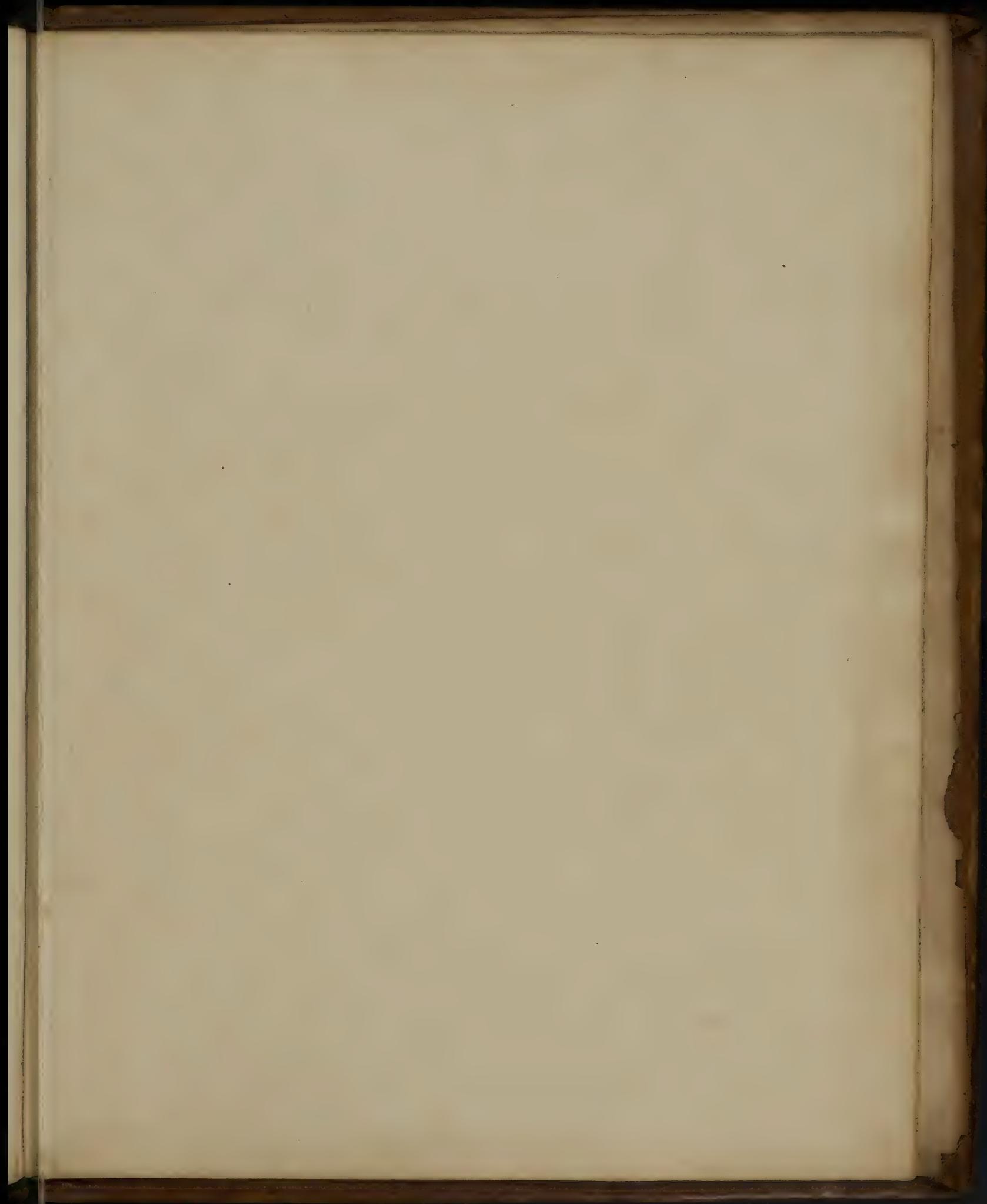


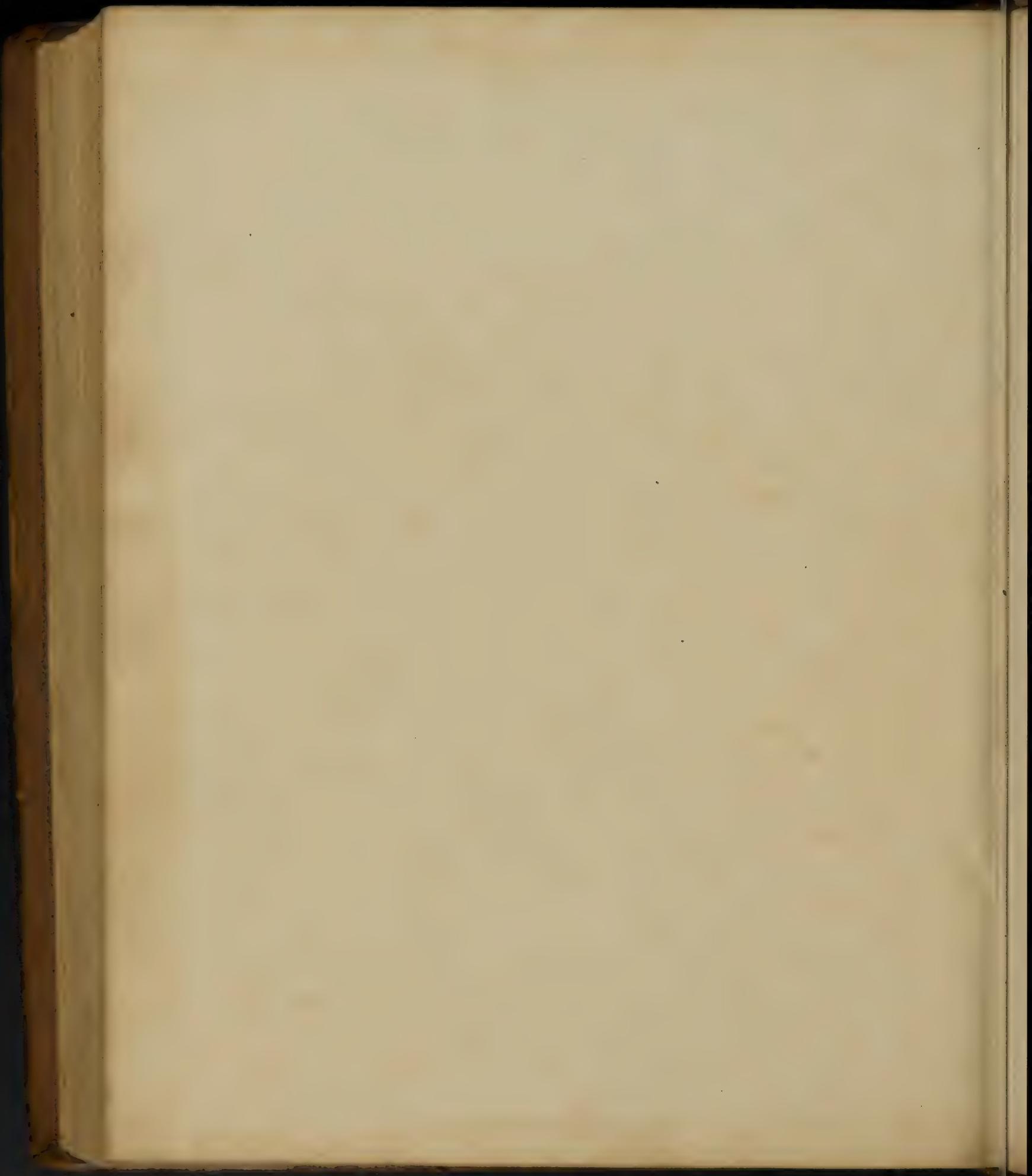


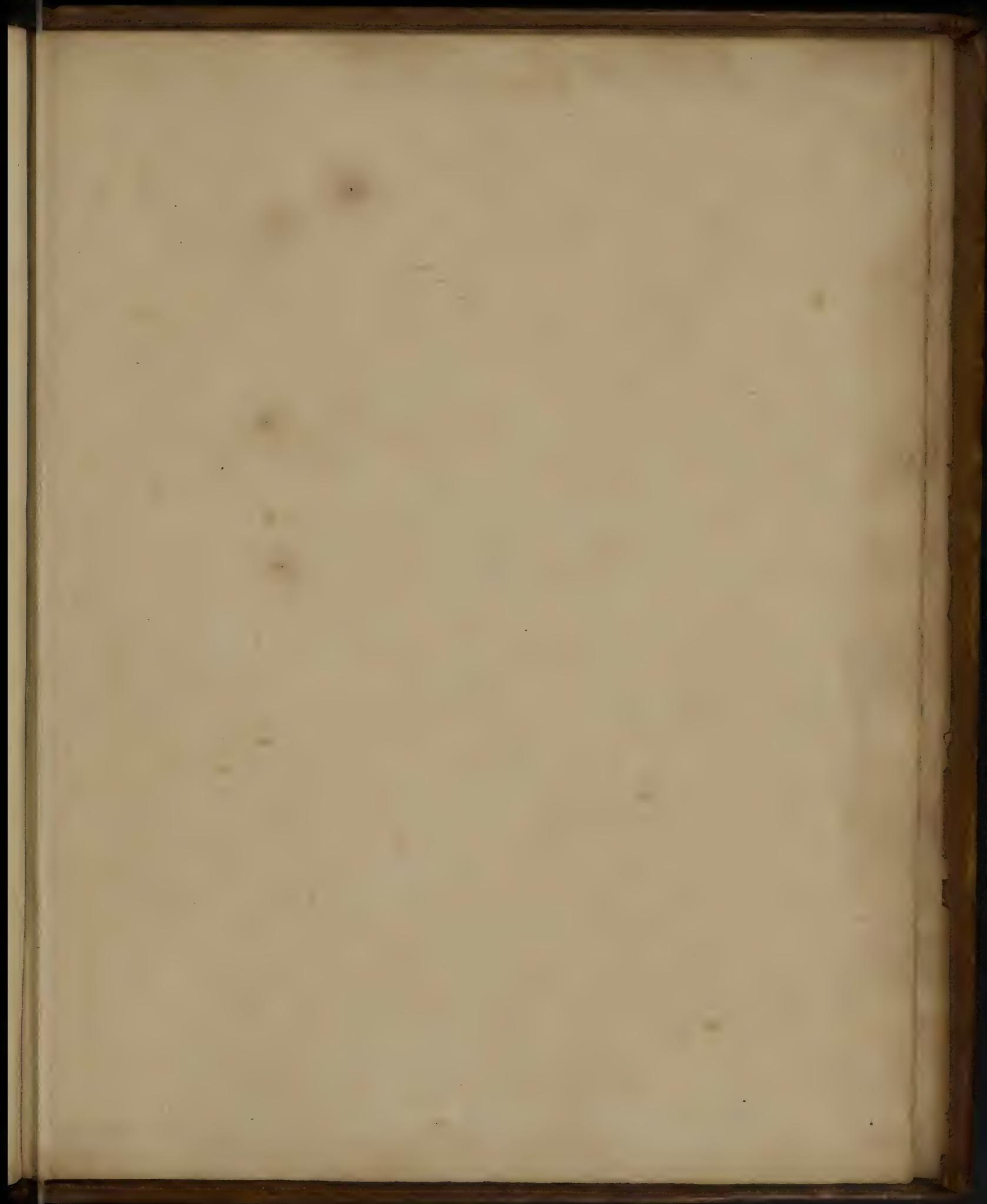


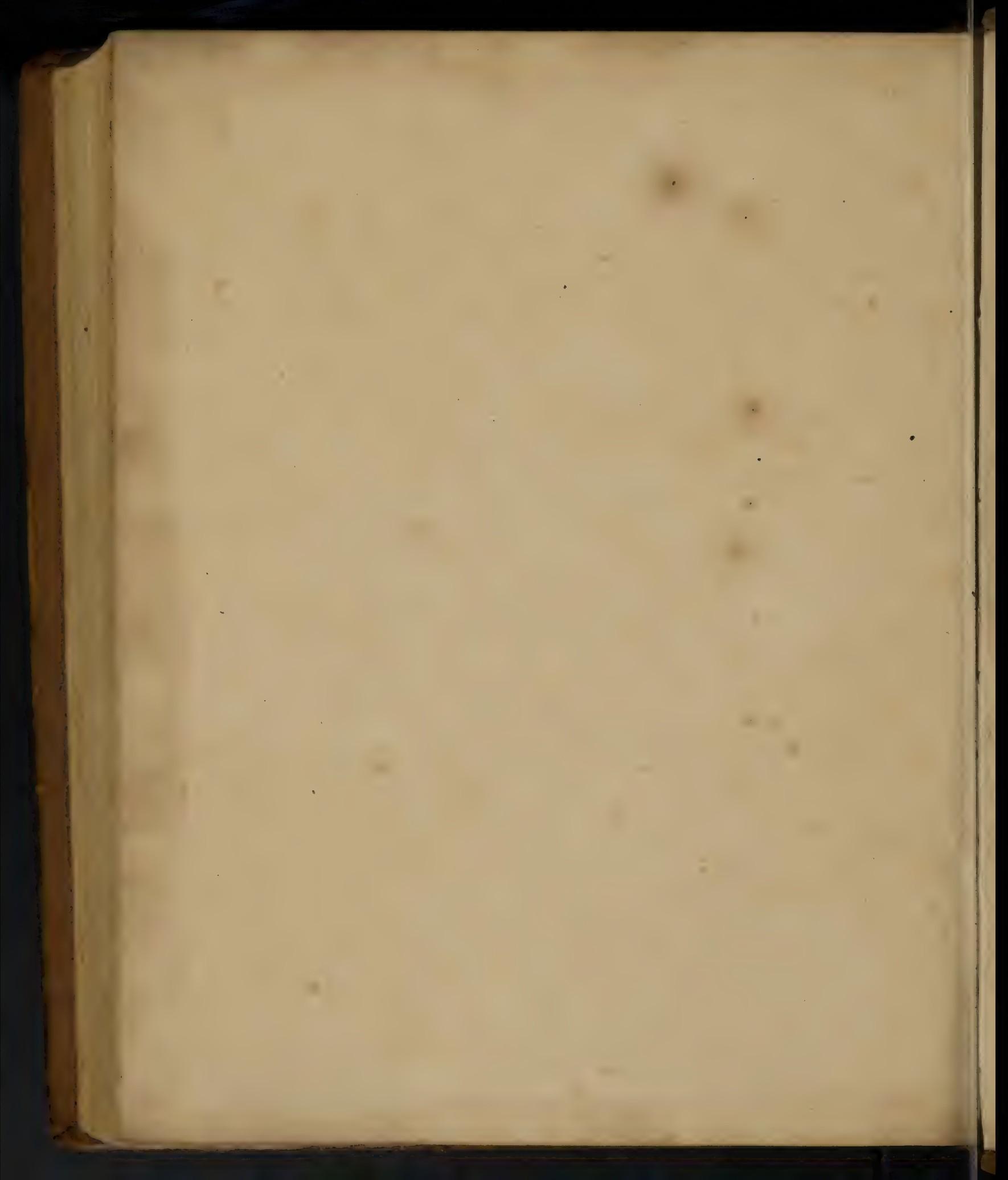


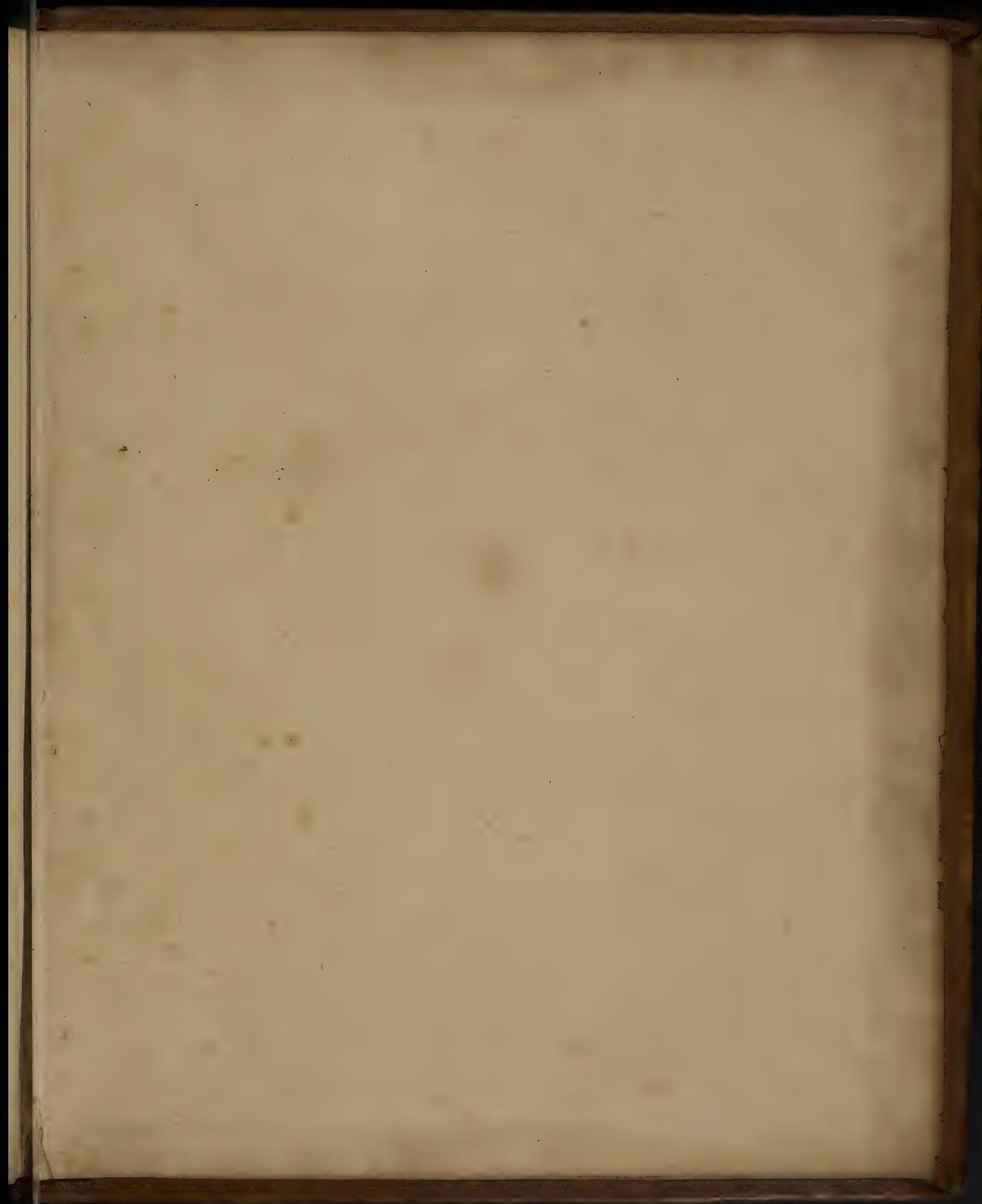




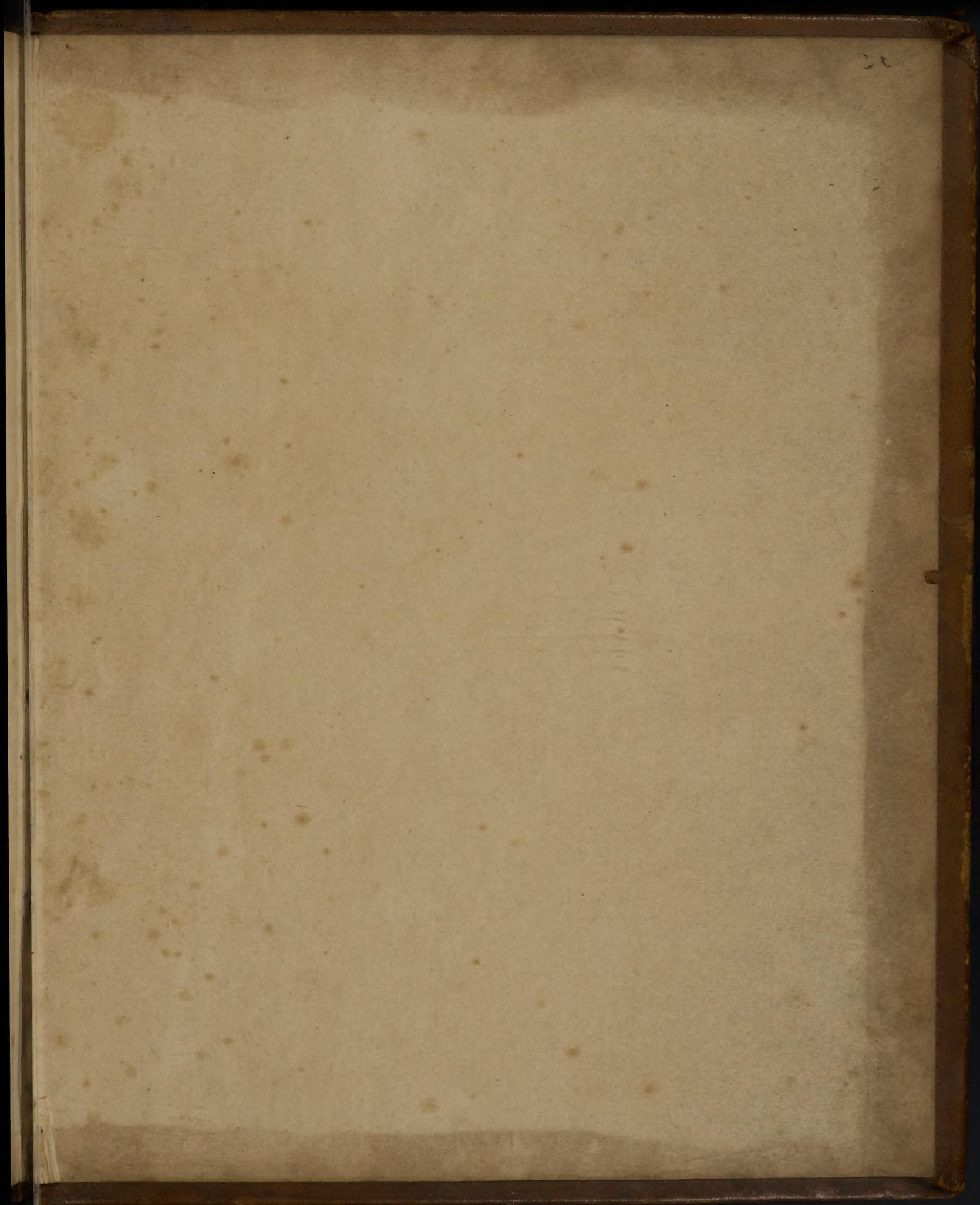


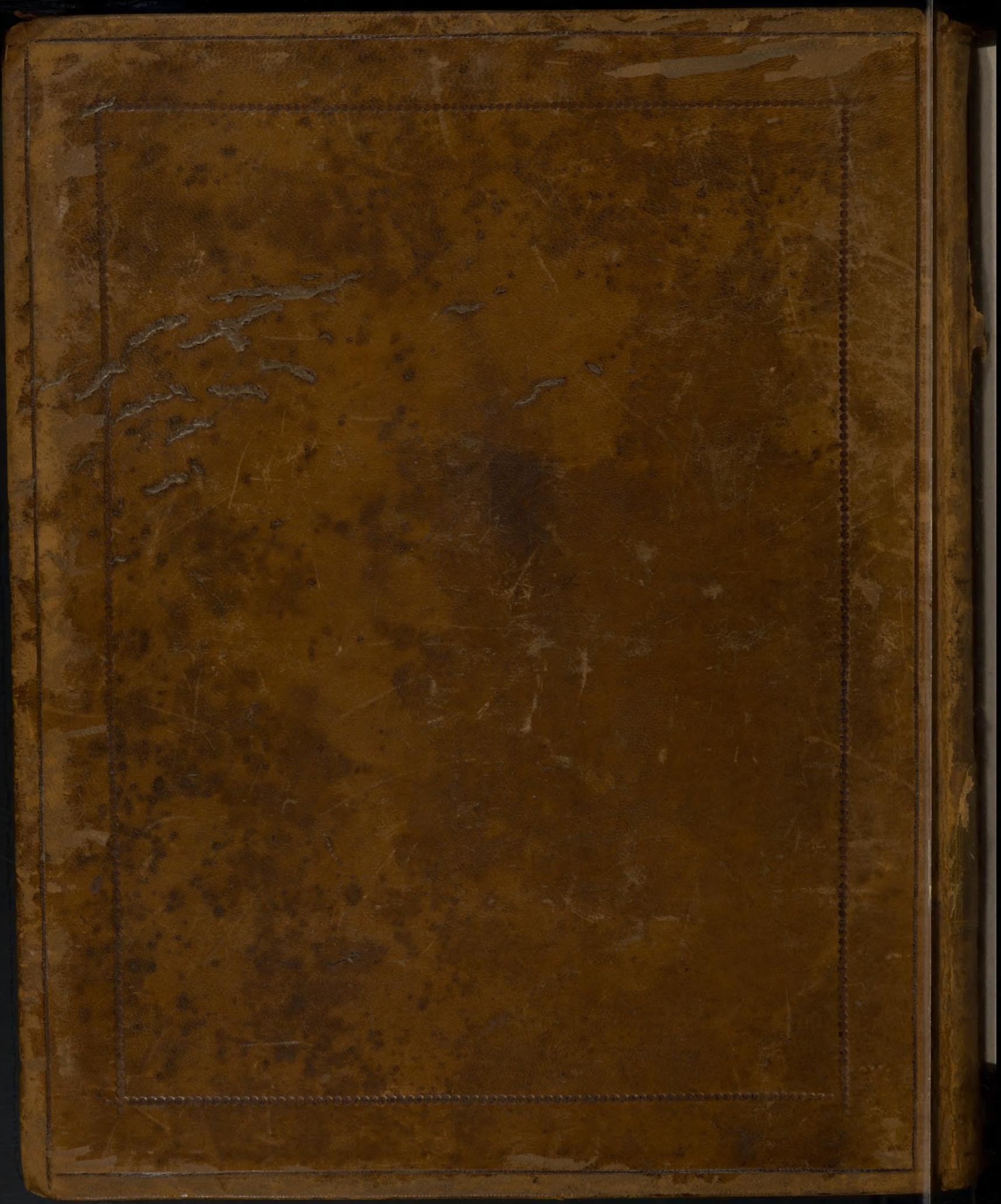






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